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"Governor signs Radburn bill into law - vetoes measure related to travel ban," The Record, July 15, 2017

RWH/JA

P.L.2017, CHAPTER 106, *approved July 13, 2017*
Senate, No. 2492 (*Fourth Reprint*)

1 AN ACT concerning the governance of common interest community
2 associations, amending P.L.1977, c.419, and amending and
3 supplementing P.L.1993, c.30.

4

5 **BE IT ENACTED** by the Senate and General Assembly of the State
6 of New Jersey:

7

8 1. (New section) The Legislature finds and declares that:

9 a. In addition to living under State, county, and municipal
10 government, recent estimates conclude that over one million New
11 Jersey residents currently live under the governance of a common
12 interest community association, such as a condominium,
13 cooperative, or homeowners' association;

14 b. The owners and ³**[tenants living in]** residents of³ these
15 communities often benefit from minimized maintenance
16 responsibilities and greater assurances that neighboring properties
17 will follow a predictable development scheme;

18 c. Along with these benefits, living under a community
19 association also creates the necessity of paying assessments and
20 fees in addition to the State and local taxes that other State residents
21 pay, and requires compliance with property regulations that may be
22 more stringent than those required by municipal government alone;

23 d. Because of the significant influence community associations
24 have over the lives of their residents and because community
25 associations are creatures of State law, it is unfair and runs contrary
26 to American democratic values for these communities to be
27 governed by trustees who are not elected in a fair and open manner;

28 e. ⁴**[³A recent court decision has determined that, although the**
29 statute governing election procedures in community associations,]
30 The supplement to⁴ "The Planned Real Estate Development Full
31 Disclosure Act" ("PREDFDA"), P.L.1977, c.419 (C.45:22A-21 et
32 seq.), ⁴**[as supplemented and amended by]** specifically, ⁴ P.L.1993,
33 c.30 ⁴**[(C.45:22A-43 et al.)]** (C.45:22A-43 et seq.)⁴ , ⁴**[applies to**
34 all community associations, regardless of their dates of
35 establishment, the statute has not previously given all unit owners

EXPLANATION – Matter enclosed in bold-faced brackets **[thus]** in the above bill is not enacted and is intended to be omitted in the law.

Matter underlined thus is new matter.

Matter enclosed in superscript numerals has been adopted as follows:

¹Senate SCU committee amendments adopted October 13, 2016.

²Assembly AHO committee amendments adopted December 5, 2016.

³Assembly floor amendments adopted February 15, 2017.

⁴Assembly floor amendments adopted March 16, 2017.

1 the right to nominate and vote for each executive board member
 2 representing their respective communities] provided all owners and
 3 residents in common interest residential communities with specific
 4 rights and protections. These rights and protections exist regardless
 5 of whether a developer established the community prior to the
 6 effective date of PREDFDA. The supplement was not specific in
 7 declaring that all unit owners were members of the association or in
 8 recognizing that, along with certain specific tenant residents, all
 9 unit owners were entitled to participate fully in elections of
 10 members of the executive board⁴ ;

11 f.³ ⁴[Residents] Unit owners⁴ living ⁴[under] in⁴ community
 12 associations should have the right to ⁴nominate candidates, run for,⁴
 13 freely elect ⁴, and be elected to⁴ the ⁴[members of the]⁴ executive
 14 boards that govern the communities ⁴], and to run for executive
 15 board positions]⁴ ; and

16 ³[f.] g.³ It is necessary and in the public interest for the
 17 Legislature to enact legislation ³[establishing] to amend
 18 PREDFDA in order to:

19 (1) Establish³ ⁴that all unit owners are members of the
 20 association and provide⁴ basic election participation rights for
 21 ⁴[the] certain⁴ residents of common interest communities ³,
 22 including the right of resident owners in good standing to ⁴[make]
 23 nominate any unit owner in good standing as a candidate for any
 24 position on the⁴ executive board ⁴[nominations]⁴ , run, ⁴[and]⁴
 25 appear on the ballot, ⁴[regardless of the] and be elected to any⁴
 26 executive board position, in every executive board election, and for
 27 those rights to apply regardless of the date of a community's
 28 establishment; and

29 (2) Establish that, except under the very limited exceptions
 30 provided, a person may not serve on an executive board unless
 31 elected through a process consistent with the provisions of
 32 PREDFDA³.

33
 34 2. Section 3 of P.L.1977, c.419 (C.45:22A-23) is amended to
 35 read as follows:

36 3. As used in this act unless the context clearly indicates
 37 otherwise:

38 a. "Disposition" means any sales, contract, lease, assignment,
 39 or other transaction concerning a planned real estate development.

40 b. "Developer" or "subdivider" means any person who disposes
 41 or offers to dispose of any lot, parcel, unit, or interest in a planned
 42 real estate development.

43 c. "Offer" means any inducement, solicitation, advertisement,
 44 or attempt to encourage a person to acquire a unit, parcel, lot, or
 45 interest in a planned real estate development.

46 d. "Purchaser" or "owner" means any person or persons who
 47 acquires a legal or equitable interest in a unit, lot, or parcel in a

1 planned real estate development, and shall be deemed to include a
2 prospective purchaser or owner. ³Following termination of
3 developer control of the executive board, pursuant to paragraph (3)
4 of subsection a. of section 5 of P.L.1993, c.30 (C.45:22A-47), this
5 definition shall not be construed to create a voting right, or any
6 other right, for a prospective purchaser or prospective owner.]
7 However, as used in ⁴[sections 1 through 6 of]⁴ P.L.1993, c.30 ⁴[,
8 (C.45:22A-43 through C.45:22A-48 et al.)] (C.45:22A-43 et seq.)⁴ ,
9 "owner" means any person owning a unit, or an "owner" ⁴or holder
10 of a "proprietary lease,"⁴ as ⁴those terms are⁴ defined under
11 ⁴[subsection] subsections⁴ i. ⁴and k.⁴ of section 3 of "The
12 Cooperative Recording Act of New Jersey," P.L.1987, c.381
13 (C.46:8D-3), if the development is a cooperative.³

14 e. "State" means the State of New Jersey.

15 f. "Commissioner" means the Commissioner of Community
16 Affairs.

17 g. "Person" shall be defined as in R.S.1:1-2.

18 h. "Planned real estate development" or "development" means
19 any real property situated within the State, whether contiguous or
20 not, which consists of or will consist of, separately owned areas,
21 irrespective of form, be it lots, parcels, units, or interest, and which
22 are offered or disposed of pursuant to a common promotional plan,
23 and providing for common or shared elements or interests in real
24 property. This definition shall not apply to any form of
25 timesharing.

26 This definition shall specifically include, but shall not be limited
27 to, property subject to the "Condominium Act," P.L.1969, c.257
28 (C.46:8B-1 et seq.), any form of homeowners' association, any
29 housing cooperative or to any community trust or other trust device.

30 This definition shall be construed liberally to effectuate the
31 purposes of this act.

32 i. "Common promotional plan" means any offer for the
33 disposition of lots, parcels, units or interests of real property by a
34 single person or group of persons acting in concert, where such lots,
35 parcels, units or interests are contiguous, or are known, designated
36 or advertised as a common entity or by a common name.

37 j. "Advertising" means and includes the publication or causing
38 to be published of any information offering for disposition or for
39 the purpose of causing or inducing any other person to purchase an
40 interest in a planned real estate development, including the land
41 sales contract to be used and any photographs or drawings or artist's
42 representations of physical conditions or facilities on the property
43 existing or to exist by means of any:

44 (1) Newspaper or periodical;

45 (2) Radio or television broadcast;

46 (3) Written or printed or photographic matter;

47 (4) Billboards or signs;

48 (5) Display of model houses or units;

- 1 (6) Material used in connection with the disposition or offer of
2 the development by radio, television, telephone or any other
3 electronic means; or
- 4 (7) Material used by developers or their agents to induce
5 prospective purchasers to visit the development, particularly
6 vacation certificates which require the holders of such certificates to
7 attend or submit to a sales presentation by a developer or his agents.
- 8 "Advertising" does not mean and shall not be deemed to include:
9 Stockholder communications such as annual reports and interim
10 financial reports, proxy materials, registration statements, securities
11 prospectuses, applications for listing securities on stock exchanges,
12 and the like; all communications addressed to and relating to the
13 account of any person who has previously executed a contract for
14 the purchase of the subdivider's lands except when directed to the
15 sale of additional lands.
- 16 k. "Non-binding reservation agreement" means an agreement
17 between the developer and a purchaser and which may be canceled
18 without penalty by either party upon written notice at any time prior
19 to the formation of a contract for the disposition of any lot, parcel,
20 unit or interest in a planned real estate development.
- 21 l. "Blanket encumbrance" means a trust deed, mortgage,
22 judgment, or any other lien or encumbrance, including an option or
23 contract to sell or a trust agreement, affecting a development or
24 affecting more than one lot, unit, parcel, or interest therein, but does
25 not include any lien or other encumbrance arising as the result of
26 the imposition of any tax assessment by any public authority.
- 27 m. "Conversion" means any change with respect to a real estate
28 development or subdivision, apartment complex or other entity
29 concerned with the ownership, use or management of real property
30 which would make such entity a planned real estate development.
- 31 n. "Association" means an association for the management of
32 common elements and facilities, organized pursuant to section 1 of
33 P.L.1993, c.30 (C.45:22A-43).
- 34 o. "Executive board" means the executive board of an
35 association, as provided for in section 3 of P.L.1993, c.30
36 (C.45:22A- 45).
- 37 p. "Unit" means any lot, parcel, unit or interest in a planned
38 real estate development that is, or is intended to be, a separately
39 owned area thereof.
- 40 q. "Association member" means the owner of a unit within a
41 planned real estate development, or a unit's tenant ²[or the
42 developer]² to the extent that the ⁴[bylaws] governing documents⁴
43 ²of the planned real estate development² permit tenant ²[or
44 developer]² membership in the association ², and the developer to
45 the extent that the development contains unsold lots, parcels, units,
46 or interests² pursuant to subsection ⁴[b.] c.⁴ of section 1 of
47 P.L.1993, c.30 (C.45:22A-43). ³This definition shall not be
48 construed to provide the developer a different ⁴[voting interest]

1 transition obligation⁴ than ⁴[is permitted] that required⁴ pursuant to
 2 section 5 of P.L.1993, c.30 (C.45:22A-47) ⁴, or to require that the
 3 developer is allowed to vote in executive board elections⁴ .³

4 r. “Good standing” means the status ³[¹.] =³ solely with
 5 respect to eligibility to ³(1)³ vote in executive board elections ²[or
 6 to] , (2) vote to² amend the bylaws ³,³ and ³[eligibility to] (3)³
 7 nominate or run for any membership position on the executive
 8 board ³[¹ assigned to unit owners] – applicable to an association
 9 member³ who ¹[meet qualifications not more excessive than
 10 compliance with the development’s governing documents, and
 11 who]¹ ³[are] is³ current on the payment of ¹[all fees lawfully
 12 assigned to the unit] common expenses, late fees, interest on unpaid
 13 assessments, legal fees, or other charges lawfully assessed, and
 14 ³[who have] which association member has³ not failed to satisfy a
 15 judgment for common expenses, late fees, interest on unpaid
 16 assessments, legal fees, or other charges lawfully assessed¹ . ³An
 17 association member is in good standing if he is in full compliance
 18 with a settlement agreement with respect to the payments of
 19 assessments, legal fees or other charges lawfully assessed, or the
 20 association member has a pending, unresolved dispute concerning
 21 charges assessed which dispute has been initiated: through a valid
 22 alternative to litigation pursuant to subsection c. of section 2 of
 23 P.L.1993, c.30 (C.45:22A-44); through subsection (k) of section 14
 24 of the "Condominium Act," P.L.1969, c.257 (C.46:8B-14); or
 25 through a pertinent court action.³

26 s. “Voting-eligible tenant” means a tenant of a unit within a
 27 planned real estate development ²[that permits] in which ⁴:

28 (1)⁴ the ³[bylaws of the development permit²] ⁴[association
 29 permits³] governing documents of the development permit⁴ the
 30 tenant’s participation in executive board elections ²[through its
 31 bylaws]² , ⁴[but shall not include a tenant whose right to vote is
 32 derived solely] and

33 (2) either (a) the development has allowed tenant participation in
 34 executive board elections as a standard practice prior to the
 35 effective date of P.L. c. (C.) (pending before the
 36 Legislature as this bill), or (b) the owner has affirmatively
 37 acknowledged the right of the tenant to vote through a provision of
 38 a written lease agreement or separate document.

39 This definition shall not be construed to affect voting⁴ as an
 40 agent of the ³[unit]³ owner through a proxy or power of attorney.
 41 ⁴Pursuant to subsection d. of this section, if the development is a
 42 cooperative corporation, then, an "owner" or holder of a
 43 “proprietary lease,” as those terms are defined under subsections i.
 44 and k. of section 3 of "The Cooperative Recording Act of New
 45 Jersey," P.L.1987, c.381 (C.46:8D-3), is also an “owner,” not a

1 tenant, for the purposes of P.L.1993, c.30 (C.45:22A-43 et seq.).⁴
 2 (cf: P.L.2006, c.63, s.39)

3

4 ³3. Section 22 of P.L.1977, c. 419 (C.45:22A-42) is amended to
 5 read as follows:

6 22. **【This act】** The provisions of P.L.1977, c.419 (C.45:22A-21
 7 et seq.), concerning the formation and registration of planned real
 8 estate developments, shall not apply to any portion of a planned real
 9 estate development which has on the effective date of 【this act】
 10 P.L.1977, c.419 (C.45:22A-21 et seq.):

11 a. Its building permit or permits; or

12 b. Final municipal approval of (1) its site plan or (2), in the case
 13 of single or two-family homes or separate lots, its subdivision plat;
 14 provided that the land is not valued, assessed and taxed as an
 15 agricultural or horticultural use pursuant to the "Farmland
 16 Assessment Act of 1964" , P.L.1964, c.48 (C.54:4-23.1 et seq.);
 17 provided further that this section shall not be construed as applying
 18 to conversions or Retirement Subdivisions or Communities as
 19 defined in the Retirement Community Full Disclosure Act,
 20 P.L.1969, c.215 (C.45:22A-1 et seq.).³

21 (cf: P.L.1977, c. 419, s. 22)

22

23 ³**【3.】**⁴³ Section 1 of P.L.1993, c.30 (C.45:22A-43) is amended
 24 to read as follows:

25 1. a. A developer subject to the registration requirements of
 26 section 6 of P.L.1977, c.419 (C.45:22A-26) shall organize or cause
 27 to be organized an association whose obligation it shall be to
 28 manage the common elements and facilities. The association shall
 29 be formed on or before the filing of the master deed or declaration
 30 of covenants and restrictions, and may be formed as a for-profit or
 31 nonprofit corporation, unincorporated association, or any other form
 32 permitted by law. ³The application of P.L.1993, c.30 ⁴**【(C.45:22A-**
 33 **43 et al.)】** (C.45:22A-43 et seq.)⁴ to the association of an existing
 34 planned real estate development shall not be limited by:

35 (1) whether the developer has been subject to ⁴, or exempted
 36 from,⁴ the registration requirements of section 6 of P.L.1977, c.419
 37 (C.45:22A-26); ⁴or⁴

38 (2) the development's date of establishment ⁴【; or

39 (3) the exemption for offers and dispositions of fewer than 100
 40 lots, parcels, units or interests established under paragraph (7) of
 41 subsection a. of section 5 of P.L.1977, c.419 (C.45:22A-25)】⁴ .³

42 b. ⁴Nothing in subsection a. of this section shall be construed to
 43 require the registration of a planned real estate development that is
 44 not otherwise required to register pursuant to section 6 of P.L.1977,
 45 c.419 (C.45:22A-26).

46 c.⁴ Membership in the association of a planned real estate
 47 development shall be comprised ³【exclusively】³ of each ³【unit】³

1 owner within the planned real estate development, and may include
 2 the developer if the development contains unsold lots, parcels,
 3 units, or interests. ³[If]³ ²[permitted by]² ³[the association's
 4 bylaws]³ ²[, a tenant may] ³[specifically provide for the
 5 participation of the voting-eligible tenant, then the voting eligible
 6 tenant shall² also be entitled to ²participate in² association]³
 7 ²[membership. However, a] ³[matters] An association may permit
 8 tenant participation in executive board elections, tenant membership
 9 in the association, or both³. A voting-eligible² tenant ²[entitled to
 10 association membership]² shall have only the same voting rights as
 11 the owner of the² unit ²[owners if the tenant is a voting-eligible
 12 tenant] that the tenant leases, and such voting rights shall be in
 13 place of and not in addition to the rights of the owner of the leased
 14 unit² ³, except as permitted under paragraph (9) of subsection ⁴[a.]
 15 c.⁴ of section 6 of P.L. , c. (C.) (pending before the
 16 Legislature as this bill)³ . Pursuant to ²paragraph ³[(7)] (9)³ of²
 17 subsection ²[e.] ⁴[a.²] c.⁴ of section ³[5] ⁶ of P.L. , c. (C.)
 18 (pending before the Legislature as this bill), the ²[voting influence
 19 of] votes associated with² a unit shall not be altered by the
 20 ²[number of association members, and] participation of² voting-
 21 eligible tenants ²[, who own or reside in the unit]² .
 22 (cf: P.L.1993, c.30, s.1)

23
 24 ³[4.] ⁵.³ Section 3 of P.L.1993, c.30 (C.45:22A-45) is
 25 amended to read as follows:

26 3. a. The form of administration of an association organized
 27 pursuant to section 1 of P.L.1993, c.30 (C.45:22A-43) shall provide
 28 for the election of an executive board, elected by the association
 29 members ³,³ and voting-eligible tenants ³where applicable³ , and
 30 responsible to the members of the association pursuant to section 4
 31 of P.L.1993, c.30 (C.45:22A-46), through which the powers of the
 32 association shall be exercised and its functions performed.

33 b. Subject to the master deed, declaration of covenants and
 34 restrictions, bylaws or other instruments of creation, subsection d.
 35 of this section, and the laws of the State, the executive board may
 36 act in all instances on behalf of the association.

37 c. The members of the executive board appointed by the
 38 developer shall be liable as fiduciaries to the owners for their acts
 39 or omissions.

40 d. During control of the executive board by the developer,
 41 copies of the annual audit of association funds shall be available for
 42 inspection by owners or their authorized representative at the
 43 project site.

44 (cf: P.L.1993, c.30, s.3)

- 1 ³[5.] 6.³ (New section) a. ²[Notice of the right to nominate
2 candidates for election to the executive board shall be mailed, hand-
3 delivered or, where permitted by the bylaws, electronically
4 delivered to each association member and each voting-eligible
5 tenant at least 30 days prior to the meeting at which an election of
6 the members of the executive board will be conducted.
- 7 b. Each position on the executive board shall be up for election
8 every four years, except that the bylaws may provide for more
9 frequent elections.
- 10 c. If the bylaws permit tenant participation in executive board
11 elections, then a tenant may exercise the voting rights of a unit
12 owner with whom he has contracted a leasehold interest.
- 13 d. (1) Subject to the exceptions under subsection g. of this
14 section, a resident-owner in good standing shall have the authority
15 to:
- 16 (a) nominate himself or any other resident-owner in good
17 standing to run for any membership position on the executive board
18 in an election at least 21 days subsequent to the nomination; and
- 19 (b) run for any membership position on the executive board
20 after obtaining a nomination at least 21 days prior to the election.
- 21 (2) In the case of a person nominated by someone other than
22 themselves, if the nominated person accepts the nomination in
23 writing within seven days of being nominated and the number of
24 candidates is less than the number of executive board positions
25 open for election, the 21-day requirement stated in paragraph (1) of
26 this subsection shall not apply.
- 27 (3) The bylaws may extend the right to nominate and run for
28 positions on the executive board provided pursuant to paragraph (1)
29 of this subsection, to all unit owners, all tenants, or others.
- 30 (4) Subject to the exceptions provided in subsection g. of this
31 section, all association members and voting-eligible tenants shall
32 have the authority to vote in each election for each position of
33 membership on the executive board. The bylaws may limit voting
34 eligibility under this paragraph to association members in good
35 standing.
- 36 e. Unless the bylaws provide for the voting interest of each unit
37 to be proportional to the unit's value or size, each unit conveyed to
38 an owner shall be entitled to one vote regardless of the number of
39 association members, and voting-eligible tenants, who own or
40 reside in a unit] ⁴[No] ⁴ ³[bylaw, rule or other governing document
41 provision of an] ³ ⁴[association may ³restrict the right to participate
42 in elections to the executive board, by³ :]
- 43 An association shall hold executive board elections in
44 accordance with the provisions of its governing documents,
45 including validly-adopted executive board rules, that do not conflict
46 with the provisions of this section. If such documents do not set a
47 specific time or interval, the elections shall be held at two year
48 intervals. If an association has not held an election in compliance

1 with its governing documents in two or more years, it shall hold an
 2 election within 90 days of the submission to any current executive
 3 board member of a petition signed by 25 or more percent of
 4 association members in good standing, but in no event less than the
 5 number of association members required to meet the quorum
 6 requirements set forth in the governing documents. If an
 7 association has no executive board members and association
 8 members fail to act on petition or by majority, any association
 9 member or group thereof, at common expense and, upon written
 10 notice to all owners, may petition a court of competent jurisdiction
 11 for authority to act temporarily in the interests of the association
 12 and to organize and hold an election within 90 days of the date of
 13 the court order. Any proxies used by an association must contain a
 14 prominent notice that use of the proxy is voluntary on the part of
 15 the granting owner, that it can be revoked at any time before the
 16 proxy holder casts a vote, and that absentee ballots are available.
 17 An association may not use proxies for an executive board member
 18 election without also making absentee ballots available.

19 b. An association of a development with fewer than 50 units
 20 shall ensure an executive board election system that includes: (1)
 21 the provision of election notice, (2) the provision of the ability to
 22 nominate and vote for any association member in good standing, (3)
 23 the provision of an opportunity to review any candidacy
 24 qualifications such that the owner is permitted to be a candidate for
 25 election to the board, (4) the provision of ready access to
 26 information on when and how to vote, and (5) the counting of
 27 ballots and verification of eligibility to vote, all of which shall be
 28 conducted in a non-fraudulent manner. Such association shall also
 29 be subject to the requirements of paragraphs (9) and (10) of
 30 subsection c. of this section.

31 c. In order to ensure open and fair executive board elections, the
 32 following provisions of this subsection shall apply to all
 33 associations of developments with 50 or more units, except for
 34 paragraphs (9) and (10), which shall apply to associations of all
 35 developments.⁴

36 (1) ³[Provide] ⁴[Providing³] An association shall not provide⁴
 37 for a term of ³[a] an executive board member to be for more than 4
 38 years, provided that nothing ³[will] shall³ prevent ³[a] an
 39 executive³ board member from continuing to serve until his or her
 40 successor is duly qualified and elected ⁴[;] .⁴

41 (2) ³[Prohibit] ⁴[Prohibiting³] An association shall not prohibit⁴
 42 a ⁴voting-eligible⁴ tenant ⁴, where applicable,⁴ from casting a vote
 43 allocated to a unit if the bylaws otherwise permit tenant
 44 participation in an election of ³executive³ board members ⁴[;] nor
 45 prohibit an individual acting pursuant to a valid power of attorney
 46 or proxy from casting a vote.⁴

- 1 (3) ³Provide for less than 14 nor more than 60 days' written
2 notice of the meeting at which an election of board members is
3 scheduled, which notice will be personally delivered, mailed by
4 U.S. Mail, or electronically transmitted where an owner has agreed
5 to accept notice by electronic means;
- 6 (4) ~~Prohibit a unit owner~~ ⁴Failing to ~~An association shall~~⁴
7 provide written notice to all association members no later than 30
8 days prior to the date for the mailing of the notice of the meeting set
9 forth in paragraph (5) of this subsection that informs association
10 members of the right to nominate themselves or other association
11 members in good standing ⁴as a candidate for ~~for candidacy to~~
12 serve on ⁴the executive board ⁴; ⁴.
- 13 (4) ⁴~~Prohibiting an association member~~³ ~~in good standing,~~ ~~An~~
14 ~~association,~~⁴ ~~subject to the exceptions under subsection~~ ²~~c.~~ ⁴~~d.~~ ²
15 ~~f.~~⁴ ~~of this section,~~ ⁴~~shall not prohibit an association member in good~~
16 ~~standing~~⁴ ~~from nominating~~ ³~~themselves~~ ~~himself~~³ ⁴~~or herself,~~⁴ ~~or~~
17 ~~any other~~ ³~~unit owner~~ ~~association member~~³ ~~in good standing as a~~
18 ~~candidate for any membership position on the executive board, so~~
19 ~~long as the nomination is made prior to the~~ ⁴~~preparation and~~⁴
20 ~~mailing of ballots or proxies to the~~ ³~~association~~³ ~~members, which~~
21 ~~mailing~~³ ~~shall occur no earlier than: (a) the day following the~~
22 ~~expiration of the time period within which candidates must be~~
23 ~~nominated, or (b) where no expiration date is set forth for~~
24 ~~nomination of candidates, then the business day prior to the mailing~~
25 ~~of the notice~~ ³~~of the election,~~³ ~~required pursuant to paragraph~~
26 ~~(3) (5)~~³ ~~of this subsection~~ ³~~.~~ ~~This paragraph shall not be~~
27 ~~implemented in a manner that results in the denial of a realistic~~
28 ~~opportunity for a unit owner to nominate a candidate~~³ ⁴~~;~~ ⁴~~.~~ ~~The~~
29 ~~period for submitting nominations shall not be less than 14 days~~
30 ~~from the mailing of the request for nominations.~~⁴
- 31 (5) ³~~Prohibit~~ ⁴~~Providing for~~ ~~An association shall provide~~
32 ~~association members written notice of an election by personal~~
33 ~~delivery, mail, or electronic means, no~~⁴ ~~less than 14 nor more than~~
34 ~~60~~ ⁴~~days' written notice of~~ ~~days prior to~~⁴ ~~the meeting at which an~~
35 ~~election of executive board members is scheduled~~ ⁴~~,~~ ~~which notice~~
36 ~~shall be personally delivered, mailed, or electronically transmitted,~~
37 ~~if an association member has agreed to accept notice by electronic~~
38 ~~means~~⁴ ~~.~~ ~~This notice shall include a proxy ballot~~ ⁴~~or~~ ~~and an~~⁴
39 ~~absentee ballot, unless prohibited by the bylaws,~~ ⁴~~with~~ ~~which~~
40 ~~ballots shall list in alphabetical order by last name~~⁴ ~~the names of all~~
41 ~~candidates nominated pursuant to paragraph (4) of this subsection~~
42 ⁴~~,~~ ~~provided that where electronic balloting is to be used, the names~~
43 ~~of all candidates nominated pursuant to paragraph (4) of this~~
44 ~~subsection shall appear on the electronic ballot~~⁴ ~~.~~ ~~In the case of~~
45 ~~mailing, the notice shall be effective when deposited in the mailbox~~
46 ~~with proper postage~~ ⁴~~;~~ ~~.~~ ~~The notice may only be sent by~~

1 electronic means if either (a) the affected association member, or
 2 voting-eligible tenant where applicable, has agreed in writing to
 3 accept notice by electronic means; or (b) the governing documents
 4 permit electronic notices, provided another form of voting by
 5 absentee balloting or proxy voting is available.⁴

6 (6) ~~4[Using]~~ An association shall use⁴ ballots, whether paper
 7 ballots or electronic ballots, that⁴ ~~4[do not]~~⁴ contain the names of all
 8 persons nominated as a candidate for the executive board⁴ ~~4[;]~~⁴ .⁴

9 (7) ~~4[Prohibiting²]~~ An association shall not prohibit⁴ any³ ~~3[unit~~
 10 owner]³ association member³ in good standing,⁴ or voting-eligible
 11 tenant where applicable,⁴ subject to the exceptions under subsection
 12 3[c.]⁴ 4[d.]³ f.⁴ of this section³ and any limitation on the number of
 13 votes per unit permitted under paragraph (9) of this subsection³ ,
 14 from voting for any nominated candidate in an executive board
 15 election⁴ ~~4[;]~~⁴ .⁴

16 ~~3[(6) Prevent]~~ (8) ~~4[Preventing³]~~ An association shall not
 17 prevent⁴ voting for³ ~~3[a]~~³ an executive³ board member by electronic
 18 means where the executive board determines to employ voting in
 19 such manner and an³ ~~3[owner]~~³ association member³ ⁴ , or voting-
 20 eligible tenant where applicable,⁴ consents to casting a vote in such
 21 manner⁴ ~~4[;]~~⁴ .⁴ ~~3[or~~
 22

23 (7) ~~Provide]~~ (9) ~~4[Providing³]~~ An association shall not provide⁴
 24 for an allocation of votes other than one vote for each unit,³ or such
 25 larger number of equal votes per unit as may be set forth in the
 26 governing documents of the association,³ except³ ~~3(a)~~³ where the
 27 bylaws or other governing document provide for the voting interest
 28 to be proportional to a unit's value or size² ³ , (b) where the
 29 governing documents permit more than one vote to be cast by each
 30 unit on an equal basis or a basis consistent with each unit's value or
 31 size, or (c) where the governing documents do not set forth the
 32 number of votes that may be cast by each unit, then in accordance
 33 with a rule adopted by the executive board that allows more than
 34 one vote to be cast by each unit, provided such rule assigns an equal
 35 number of votes to each unit⁴ ~~4[; or]~~⁴ .⁴

36 (10) ~~4[Establishing election]~~ Election⁴ procedures⁴ ~~4[that]~~⁴ shall
 37 not be established or administered in any way to⁴ prohibit
 38 participation by the residents of low or moderate income housing
 39 units³ .

40 ² ~~[f.]~~⁴ ~~4[b.]~~² d.⁴ Initial executive board elections in condominium
 41 associations, governed under the "Condominium Act," P.L.1969,
 42 c.257 (C.46:8B-1 et seq.), shall follow the notice timeline under
 43 subsection b. of section 2 of P.L.1979, c.157 (C.46:8B-12.1), and
 44 shall not be subject to² ~~[the notice requirements under subsections~~
 45 a. and d. of]² this section.

46 ² ~~[g.]~~⁴ ~~4[c.]~~² e.⁴ ³ Whether or not formed as a nonprofit
corporation, associations⁴ of developments of 50 or more units⁴

1 shall conform to the requirements of the "New Jersey Nonprofit
2 Corporation Act," P.L.1983, c.127 (N.J.S.15A:1-1 et seq.) regarding
3 the counting of ballots.

4 ⁴[d.] f.⁴ (1) It shall be permissible ²for the bylaws of the
5 association to provide²:

6 (a) for the association members ³,³ and voting-eligible tenants
7 ³where applicable,³ of a planned real estate development with units
8 of different use types to nominate and vote for some members of the
9 executive board and, pursuant to the mixed-use development's
10 governing documents, have other members of the executive board
11 nominated and elected by association members and voting-eligible
12 tenants of units of a different use type;

13 (b) for the association members ³,³ and voting-eligible tenants
14 ³where applicable,³ of a planned real estate development to
15 nominate and vote only for some members of the executive board
16 based upon a distribution that allocates votes with approximate
17 proportionality to the number, value, or size of units located in
18 certain geographical areas within the development;

19 (c) ²[to limit] for a limitation on² the number of executive board
20 members nominated and elected by only certain association
21 members, and voting-eligible tenants ³where applicable³, if that
22 limit is based upon a classification intended to further the election
23 of one or more executive board members by the association
24 members, and voting-eligible tenants ³where applicable³, of
25 affordable housing units that represent a minority of the units in a
26 planned real estate development; ³[and]³

27 (d) for the association members, and voting-eligible tenants
28 ³where applicable³, of a planned real estate development to
29 nominate and vote for some members of the executive board and,
30 pursuant to the governing documents, have other members of the
31 executive board nominated and elected by the association members,
32 and voting-eligible tenants ³where applicable³, of one or more
33 separate developments, so long as each development's voting
34 weight is approximately proportional, based on the number, value,
35 or size of the units; ³and

36 (e) that ⁴, except for executive board members serving as
37 representatives of the developer during the period prior to surrender
38 of control to the owners pursuant to section 5 of P.L.1993, c.30
39 (C.45:22A-47),⁴ not more than one owner, entity-owner
40 representative, or voting-eligible tenant where applicable, from a
41 single unit may serve on the governing board simultaneously;³

42 (2) The executive board of an umbrella or master association
43 that does not directly contain units need not be elected by
44 individuals who are association members, and voting-eligible
45 tenants ³where applicable³, with units within the geographical area
46 of the umbrella or master association, provided the members of the
47 executive board serve as executive board members of another

1 planned real estate development executive board, and have been
2 nominated and elected by the association members, and voting-
3 eligible tenants ³where applicable³, with units in that planned real
4 estate development, in compliance with this section.

5 (3) ³【The requirements of this section do not apply to members
6 of the executive board that may be appointed by the developer
7 pursuant to section 5 of P.L.1993, c.30 (C.45:22A-47)】 Except with
8 regard to a planned real estate development containing fewer than
9 ⁴【10】 50⁴ units, and any appointment by the developer permitted
10 pursuant to section 5 of P.L.1993, c.30 (C.45:22A-47), an
11 association shall:

12 (a) not allow a person to take an executive board position
13 through appointment, provided that nothing herein shall prevent the
14 executive board members of an association from filling a vacancy in
15 the executive board created by resignation, death, failure to
16 maintain any reasonable qualification, including maintaining good
17 standing, to be an executive board member or by removal following
18 a vote in favor of removal open to all association members in
19 accordance with the terms of the bylaws; and

20 (b) ensure that, in order to serve on the executive board, a person
21 shall be elected through a process that does not conflict with the
22 provisions of this section³.

23
24 ³【6.】 7.³ Section 4 of P.L.1993, c.30 (C.45:22A-46) is amended
25 to read as follows:

26 4. The bylaws of the association, which shall initially be
27 recorded with the master deed shall include, in addition to any other
28 lawful provisions, the following:

29 a. A requirement that all meetings of the executive board,
30 except conference or working sessions at which no binding votes
31 are to be taken, shall be open to attendance by all ³【unit owners】
32 association members³ , and voting-eligible tenants where
33 applicable, and adequate notice of any such meeting shall be given
34 to all ³【unit owners】 association members³ , and voting-eligible
35 tenants where applicable, in such manner as the bylaws shall
36 prescribe; except that the executive board may exclude or restrict
37 attendance at those meetings, or portions of meetings, dealing with
38 (1) any matter the disclosure of which would constitute an
39 unwarranted invasion of individual privacy; (2) any pending or
40 anticipated litigation or contract negotiations; (3) any matters
41 falling within the attorney-client privilege, to the extent that
42 confidentiality is required in order for the attorney to exercise his
43 ethical duties as a lawyer, or (4) any matter involving the
44 employment, promotion, discipline or dismissal of a specific officer
45 or employee of the association. At each meeting required under this
46 subsection to be open to all ³【unit owners】 association members³ ,
47 and voting-eligible tenants where applicable, the participation of

1 unit ³[unit owners] association members³ , and voting-eligible
2 tenants where applicable, in the proceedings or the provision of a
3 public comment session shall be at the discretion of the executive
4 board, minutes of the proceedings shall be taken, and copies of
5 those minutes shall be made available to all ³[unit owners]
6 association members³ , and voting-eligible tenants where
7 applicable, before the next open meeting.

8 b. The method of calling meetings of ³[unit owners]
9 association members³ , and voting-eligible tenants where
10 applicable, the percentage of ³[unit owners] association members³ ,
11 and voting-eligible tenants where applicable, or voting rights
12 required to make decisions and to constitute a quorum. The bylaws
13 may, nevertheless, provide that ³[unit owners] an individual
14 association member³ , and ³a³ voting-eligible ³[tenants] tenant³
15 where applicable, may waive notice of meetings ³in writing,³ or
16 may act by written agreement without meetings.

17 c. The manner of collecting from ³[unit]³ owners their
18 respective shares of common expenses and the method of
19 distribution to the ³[unit]³ owners of their respective shares of
20 common surplus or such other application of common surplus as
21 may be duly authorized by the bylaws.

22 d. (1) The method by which the bylaws may be amended,
23 provided that no amendment shall be effective until recorded in the
24 same office as the then existing bylaws. The bylaws may also
25 provide a method for the adoption, amendment and enforcement of
26 reasonable administrative rules and regulations relating to the
27 operation, use, maintenance and enjoyment of the units and of the
28 common elements, including limited common elements.

29 (2) If association bylaws provide for no method of their
30 amendment by a vote of the association members ³open to all
31 association members³ , or only allow association members to amend
32 the bylaws through a majority vote exceeding a two-thirds majority,
33 then the ²association² members may amend the bylaws by an
34 affirmative vote of ²[two-thirds] a majority² of the total authorized
35 votes in the association. If the bylaws do not provide for a method
36 by which the ²association² members may call a meeting of the
37 ²association² members to conduct a vote to amend the bylaws or do
38 not contain provisions concerning the subject matter of
39 subparagraphs (a) through (f) of this paragraph, then a vote
40 concerning an amendment to the bylaws shall be conducted as
41 follows:

42 (a) fifteen percent of the ²association² members may request a
43 meeting of the association's membership by executing a document
44 requesting that a special meeting of the ²association² membership
45 be held, or if the annual meeting of the ²association² membership
46 ³[will] is scheduled to³ occur within 60 days of the date of the

1 request, then the amendment vote shall be held at the annual
2 meeting:

3 (b) if the vote ³[will not] is not scheduled to³ take place at the
4 annual meeting of the association, the executive board shall
5 schedule the special meeting of the ²association² membership to
6 occur within 60 days of the receipt of the request ⁴[, which] .
7 Notice of the meeting shall be provided to the association members
8 and voting-eligible tenants, where applicable, at least 14 days prior
9 to the date of the meeting. The⁴ special meeting shall be held
10 ³[between the hours of 7:00 p.m. and 8:00 p.m., except that if such
11 day is a Sunday, the meeting shall be held on the next day
12 thereafter] at a ⁴reasonable⁴ time ⁴[when] that is likely to permit⁴
13 most association members ⁴[are able]⁴ to attend³;

14 (c) the language of the ¹proposed¹ amendment shall be
15 ¹[submitted to the association and shall be placed in appropriate
16 form for distribution to the membership, which] unambiguous and
17 consistent with applicable law and with the provisions of the bylaws
18 that are not proposed to be amended, and if not in such condition
19 shall be revised to satisfy that requirement. Upon satisfaction of
20 this requirement, the¹ amendment shall be mailed, hand-delivered
21 or, if the bylaws permit, electronically delivered, together with the
22 notice of the meeting to the ²association² membership at least 10
23 days prior to the meeting;

24 (d) if permitted by the association's bylaws, the notice of the
25 meeting shall include a proxy ballot or absentee ballot with
26 instructions for the return of same, which instructions shall permit
27 facsimile or electronic mail delivery of the proxy ballot or absentee
28 ballot to the association and shall not require receipt of the proxy or
29 absentee ballot more than one business day prior to the meeting;

30 (e) if a sufficient number of ballots or proxies are not received
31 at the special or annual meeting to conclusively determine that the
32 proposed amendment has been approved or rejected, the meeting
33 shall be adjourned for a period of 30 days, or such longer period as
34 approved by the ²association² membership by approval of a motion
35 to extend the vote concerning the amendment, but in no event for
36 longer than 11 months from when the notice of the meeting was
37 sent, and all proxies or ballots received prior to the extended date
38 shall remain valid if otherwise valid under the terms of the bylaws;
39 and

40 (f) ²[if the] when an² amendment is approved, ²a copy of the
41 approved amendment shall be provided to all association members,
42 and² the association shall promptly record the ²[same] amendment²
43 in the county recording office where the bylaws were recorded.

44 (3) Paragraph (2) of this subsection shall not be construed to
45 require a vote to be held on an amendment to the bylaws that has
46 been voted on in the preceding 12 months of the initial meeting

1 request, made pursuant to subparagraph (a) of paragraph (2) of this
 2 subsection.

3 (4) For the purposes of paragraph (2) of this subsection, the
 4 number of total authorized votes in the association shall be based on
 5 the whole number of units owned by someone entitled to
 6 ²association² membership ³[in the association]³ after subtracting
 7 those ³[owners] association members who are³ ineligible to vote
 8 because they are not in good standing.

9 ³(5) An executive board shall not amend the bylaws of an
 10 association without a vote of the association members open to all
 11 association members, as provided in the association's bylaws, or
 12 where the bylaws provide for no method of their amendment by a
 13 vote of the association members, or only allow association members
 14 to amend the bylaws through a majority vote exceeding a two-thirds
 15 majority, then an association shall only amend the bylaws pursuant
 16 to paragraph (2) of this subsection, except an executive board may
 17 amend the bylaws under the following circumstances:

18 (a) to the extent necessary to render the bylaws consistent with
 19 State, federal or local law; or

20 (b) after providing notice to all association members of the
 21 proposed amendment, which notice shall include a ballot to reject
 22 the proposed amendment. Other than an amendment to render the
 23 bylaws consistent with State, federal, or local law, if at least 10
 24 percent of association members vote to reject the amendment within
 25 30 days of its mailing, the amendment shall be deemed defeated.³

26 (cf: P.L.1993, c.30, s.4)

27

28 ³[7.] §.³ Section 5 of P.L.1993, c.30 (C.45:22A-47) is amended
 29 to read as follows:

30 5. a. Irrespective of the time set for developer control of the
 31 association provided in the master deed, declaration of covenants
 32 and restrictions, or other instruments of creation, control of the
 33 association shall be surrendered to the owners in the following
 34 manner:

35 (1) Sixty days after conveyance of 25 percent of the lots,
 36 parcels, units or interests, not fewer than 25 percent of the members
 37 of the executive board shall be elected by the owners ^{3,3} and voting-
 38 eligible tenants ³where applicable³.

39 (2) Sixty days after conveyance of 50 percent of the lots,
 40 parcels, units or interests, not fewer than 40 percent of the members
 41 of the executive board shall be elected by the owners ^{3,3} and voting-
 42 eligible tenants ³where applicable³.

43 (3) Sixty days after conveyance of 75 percent of the lots,
 44 parcels, units or interests, the developer's control of the executive
 45 board shall terminate, at which time the owners ^{3,3} and voting-
 46 eligible tenants ³where applicable.³ shall elect the entire executive
 47 board; except that the developer may retain the selection of one

- 1 executive board member so long as there are any units remaining
2 unsold in the regular course of business.
- 3 b. The percentages specified in subsection a. of this section
4 shall be calculated upon the basis of the whole number of units
5 entitled to membership in the association. The bylaws of the
6 association shall specify the number or proportion of votes of all
7 units conveyed to owners that shall be required for the election of
8 ³executive³ board members. Unless the bylaws provide
9 **【otherwise】** for ³【the voting interest of each unit to be proportional
10 to the unit's value or size】 an alternate approach to allocating votes
11 pursuant to paragraph (9) of subsection ⁴**【a.】** c. ⁴ of section 6 of
12 P.L. , c. (C.) (pending before the Legislature as this
13 bill)³ , each unit conveyed to an owner shall be entitled to one vote
14 regardless of the number of association members, and voting-
15 eligible tenants ³where applicable³ , residing in a unit. A developer
16 may surrender control of the executive board of the association
17 before the time specified in subsection a. of this section, if the
18 **【owners】** association members, and voting-eligible tenants ³where
19 applicable³ , agree by a majority vote to assume control.
- 20 c. Upon assumption by the owners of control of the executive
21 board of the association, the developer shall ⁴**【forthwith】**⁴ deliver
22 to the association all items and documents pertinent to the
23 association, such as, but not limited to, a copy of the master deed,
24 declaration of covenants and restrictions, documents of creation of
25 the association, bylaws, minute book including all minutes, any
26 rules and regulations, association funds and an accounting therefor,
27 all personal property, insurance policies, government permits, a
28 membership roster and all contracts and agreements relative to the
29 association ³within 60 days of ⁴**【the turnover】** that transition⁴ date³
30 ⁴, established pursuant to this section⁴.
- 31 d. The association when controlled by the owners ^{3,3} and
32 voting-eligible tenants ³where applicable,³ shall not take any action
33 that would be detrimental to the sale of units by the developer, and
34 shall continue the same level of maintenance, operation and
35 services as immediately prior to their assumption of control, until
36 the last unit is sold.
- 37 e. From the time of conveyance of 75 percent of the lots,
38 parcels, units, or interests, until the last lot, parcel, unit, or interest
39 in the development is conveyed in the ordinary course of business,
40 the master deed, bylaws or declaration of covenants and restrictions
41 shall not require that more than 75 percent of the votes entitled to
42 be cast thereon be cast in the affirmative for a change in the bylaws
43 or regulations of the association.
- 44 f. The developer shall not be permitted to cast any votes
45 allocated to unsold lots, parcels, units, or interests, in order to
46 amend the master deed, bylaws, or any other document, for the
47 purpose of changing the permitted use of a lot, parcel, unit, or

1 interest, or for the purpose of reducing the common elements or
2 facilities.

3 (cf: P.L.1993, c.30, s.5)

4

5 ³~~[8.]~~ 9.³ This act shall take effect immediately ⁴~~[.~~ ²~~However,]~~ ,
6 except that⁴ paragraphs (1) through (9) of subsection ⁴~~[a.]~~ c.⁴ of
7 section 6 concerning notice, nominations, ballot content, voting,
8 and vote distribution in executive board elections shall remain
9 inoperative until the first day of the third month next following
10 enactment and shall be applicable to each executive board election
11 on or after that date.³

12

13

14

15

16 Enhances resident voting participation rights in common interest
17 communities.

SENATE, No. 2492

STATE OF NEW JERSEY
217th LEGISLATURE

INTRODUCED SEPTEMBER 8, 2016

Sponsored by:

Senator ROBERT M. GORDON

District 38 (Bergen and Passaic)

Senator KEVIN J. O'TOOLE

District 40 (Bergen, Essex, Morris and Passaic)

Co-Sponsored by:

Senators Weinberg and Beck

SYNOPSIS

Enhances resident voting participation rights in common interest communities.

CURRENT VERSION OF TEXT

As introduced.



(Sponsorship Updated As Of: 10/14/2016)

1 AN ACT concerning the governance of common interest community
2 associations, amending P.L.1977, c.419, and amending and
3 supplementing P.L.1993, c.30.

4
5 **BE IT ENACTED** by the Senate and General Assembly of the State
6 of New Jersey:

7
8 1. (New section) The Legislature finds and declares that:

9 a. In addition to living under State, county, and municipal
10 government, recent estimates conclude that over one million New
11 Jersey residents currently live under the governance of a common
12 interest community association, such as a condominium,
13 cooperative, or homeowners' association;

14 b. The owners and tenants living in these communities often
15 benefit from minimized maintenance responsibilities and greater
16 assurances that neighboring properties will follow a predictable
17 development scheme;

18 c. Along with these benefits, living under a community
19 association also creates the necessity of paying assessments and
20 fees in addition to the State and local taxes that other State residents
21 pay, and requires compliance with property regulations that may be
22 more stringent than those required by municipal government alone;

23 d. Because of the significant influence community associations
24 have over the lives of their residents and because community
25 associations are creatures of State law, it is unfair and runs contrary
26 to American democratic values for these communities to be
27 governed by trustees who are not elected in a fair and open manner;

28 e. Residents living under community associations should have
29 the right to freely elect the members of the executive boards that
30 govern the communities, and to run for executive board positions;
31 and

32 f. It is necessary and in the public interest for the Legislature
33 to enact legislation establishing basic election participation rights
34 for the residents of common interest communities.

35
36 2. Section 3 of P.L.1977, c.419 (C.45:22A-23) is amended to
37 read as follows:

38 3. As used in this act unless the context clearly indicates
39 otherwise:

40 a. "Disposition" means any sales, contract, lease, assignment,
41 or other transaction concerning a planned real estate development.

42 b. "Developer" or "subdivider" means any person who disposes
43 or offers to dispose of any lot, parcel, unit, or interest in a planned
44 real estate development.

EXPLANATION – Matter enclosed in bold-faced brackets [thus] in the above bill is not enacted and is intended to be omitted in the law.

Matter underlined thus is new matter.

- 1 c. "Offer" means any inducement, solicitation, advertisement,
2 or attempt to encourage a person to acquire a unit, parcel, lot, or
3 interest in a planned real estate development.
- 4 d. "Purchaser" or "owner" means any person or persons who
5 acquires a legal or equitable interest in a unit, lot, or parcel in a
6 planned real estate development, and shall be deemed to include a
7 prospective purchaser or owner. Following termination of
8 developer control of the executive board, pursuant to paragraph (3)
9 of subsection a. of section 5 of P.L.1993, c.30 (C.45:22A-47), this
10 definition shall not be construed to create a voting right, or any
11 other right, for a prospective purchaser or prospective owner.
- 12 e. "State" means the State of New Jersey.
- 13 f. "Commissioner" means the Commissioner of Community
14 Affairs.
- 15 g. "Person" shall be defined as in R.S.1:1-2.
- 16 h. "Planned real estate development" or "development" means
17 any real property situated within the State, whether contiguous or
18 not, which consists of or will consist of, separately owned areas,
19 irrespective of form, be it lots, parcels, units, or interest, and which
20 are offered or disposed of pursuant to a common promotional plan,
21 and providing for common or shared elements or interests in real
22 property. This definition shall not apply to any form of
23 timesharing.
- 24 This definition shall specifically include, but shall not be limited
25 to, property subject to the "Condominium Act," P.L.1969, c.257
26 (C.46:8B-1 et seq.), any form of homeowners' association, any
27 housing cooperative or to any community trust or other trust device.
- 28 This definition shall be construed liberally to effectuate the
29 purposes of this act.
- 30 i. "Common promotional plan" means any offer for the
31 disposition of lots, parcels, units or interests of real property by a
32 single person or group of persons acting in concert, where such lots,
33 parcels, units or interests are contiguous, or are known, designated
34 or advertised as a common entity or by a common name.
- 35 j. "Advertising" means and includes the publication or causing
36 to be published of any information offering for disposition or for
37 the purpose of causing or inducing any other person to purchase an
38 interest in a planned real estate development, including the land
39 sales contract to be used and any photographs or drawings or artist's
40 representations of physical conditions or facilities on the property
41 existing or to exist by means of any:
- 42 (1) Newspaper or periodical;
 - 43 (2) Radio or television broadcast;
 - 44 (3) Written or printed or photographic matter;
 - 45 (4) Billboards or signs;
 - 46 (5) Display of model houses or units;

1 (6) Material used in connection with the disposition or offer of
2 the development by radio, television, telephone or any other
3 electronic means; or

4 (7) Material used by developers or their agents to induce
5 prospective purchasers to visit the development, particularly
6 vacation certificates which require the holders of such certificates to
7 attend or submit to a sales presentation by a developer or his agents.

8 "Advertising" does not mean and shall not be deemed to include:
9 Stockholder communications such as annual reports and interim
10 financial reports, proxy materials, registration statements, securities
11 prospectuses, applications for listing securities on stock exchanges,
12 and the like; all communications addressed to and relating to the
13 account of any person who has previously executed a contract for
14 the purchase of the subdivider's lands except when directed to the
15 sale of additional lands.

16 k. "Non-binding reservation agreement" means an agreement
17 between the developer and a purchaser and which may be canceled
18 without penalty by either party upon written notice at any time prior
19 to the formation of a contract for the disposition of any lot, parcel,
20 unit or interest in a planned real estate development.

21 l. "Blanket encumbrance" means a trust deed, mortgage,
22 judgment, or any other lien or encumbrance, including an option or
23 contract to sell or a trust agreement, affecting a development or
24 affecting more than one lot, unit, parcel, or interest therein, but does
25 not include any lien or other encumbrance arising as the result of
26 the imposition of any tax assessment by any public authority.

27 m. "Conversion" means any change with respect to a real estate
28 development or subdivision, apartment complex or other entity
29 concerned with the ownership, use or management of real property
30 which would make such entity a planned real estate development.

31 n. "Association" means an association for the management of
32 common elements and facilities, organized pursuant to section 1 of
33 P.L.1993, c.30 (C.45:22A-43).

34 o. "Executive board" means the executive board of an
35 association, as provided for in section 3 of P.L.1993, c.30
36 (C.45:22A- 45).

37 p. "Unit" means any lot, parcel, unit or interest in a planned
38 real estate development that is, or is intended to be, a separately
39 owned area thereof.

40 q. "Association member" means the owner of a unit within a
41 planned real estate development, or a unit's tenant or the developer
42 to the extent that the bylaws permit tenant or developer membership
43 in the association pursuant to subsection b. of section 1 of P.L.1993,
44 c.30 (C.45:22A-43).

45 r. "Good standing" means the status assigned to unit owners
46 who meet qualifications not more excessive than compliance with
47 the development's governing documents, and who are current on
48 the payment of all fees lawfully assigned to the unit.

1 s. “Voting-eligible tenant” means a tenant of a unit within a
2 planned real estate development that permits the tenant’s
3 participation in executive board elections through its bylaws, but
4 shall not include a tenant whose right to vote is derived solely as an
5 agent of the unit owner through a proxy or power of attorney.

6 (cf: P.L.2006, c.63, s.39)

7
8 3. Section 1 of P.L.1993, c.30 (C.45:22A-43) is amended to
9 read as follows:

10 1. a. A developer subject to the registration requirements of
11 section 6 of P.L.1977, c.419 (C.45:22A-26) shall organize or cause
12 to be organized an association whose obligation it shall be to
13 manage the common elements and facilities. The association shall
14 be formed on or before the filing of the master deed or declaration
15 of covenants and restrictions, and may be formed as a for-profit or
16 nonprofit corporation, unincorporated association, or any other form
17 permitted by law.

18 b. Membership in the association of a planned real estate
19 development shall be comprised exclusively of each unit owner
20 within the planned real estate development, and may include the
21 developer if the development contains unsold lots, parcels, units, or
22 interests. If permitted by the association’s bylaws, a tenant may
23 also be entitled to association membership. However, a tenant
24 entitled to association membership shall have only the same voting
25 rights as unit owners if the tenant is a voting-eligible tenant.
26 Pursuant to subsection e. of section 5 of P.L. , c. (C.)
27 (pending before the Legislature as this bill), the voting influence of
28 a unit shall not be altered by the number of association members,
29 and voting-eligible tenants, who own or reside in the unit.

30 (cf: P.L.1993, c.30, s.1)

31
32 4. Section 3 of P.L.1993, c.30 (C.45:22A-45) is amended to
33 read as follows:

34 3. a. The form of administration of an association organized
35 pursuant to section 1 of P.L.1993, c.30 (C.45:22A-43) shall provide
36 for the election of an executive board, elected by the association
37 members and voting-eligible tenants, and responsible to the
38 members of the association pursuant to section 4 of P.L.1993, c.30
39 (C.45:22A-46), through which the powers of the association shall
40 be exercised and its functions performed.

41 b. Subject to the master deed, declaration of covenants and
42 restrictions, bylaws or other instruments of creation, subsection d.
43 of this section, and the laws of the State, the executive board may
44 act in all instances on behalf of the association.

45 c. The members of the executive board appointed by the
46 developer shall be liable as fiduciaries to the owners for their acts
47 or omissions.

1 d. During control of the executive board by the developer,
2 copies of the annual audit of association funds shall be available for
3 inspection by owners or their authorized representative at the
4 project site.

5 (cf: P.L.1993, c.30, s.3)

6
7 5. (New section) a. Notice of the right to nominate candidates
8 for election to the executive board shall be mailed, hand-delivered
9 or, where permitted by the bylaws, electronically delivered to each
10 association member and each voting-eligible tenant at least 30 days
11 prior to the meeting at which an election of the members of the
12 executive board will be conducted.

13 b. Each position on the executive board shall be up for election
14 every four years, except that the bylaws may provide for more
15 frequent elections.

16 c. If the bylaws permit tenant participation in executive board
17 elections, then a tenant may exercise the voting rights of a unit
18 owner with whom he has contracted a leasehold interest.

19 d. (1) Subject to the exceptions under subsection g. of this
20 section, a resident-owner in good standing shall have the authority
21 to:

22 (a) nominate himself or any other resident-owner in good
23 standing to run for any membership position on the executive board
24 in an election at least 21 days subsequent to the nomination; and

25 (b) run for any membership position on the executive board
26 after obtaining a nomination at least 21 days prior to the election.

27 (2) In the case of a person nominated by someone other than
28 themselves, if the nominated person accepts the nomination in
29 writing within seven days of being nominated and the number of
30 candidates is less than the number of executive board positions
31 open for election, the 21-day requirement stated in paragraph (1) of
32 this subsection shall not apply.

33 (3) The bylaws may extend the right to nominate and run for
34 positions on the executive board provided pursuant to paragraph (1)
35 of this subsection, to all unit owners, all tenants, or others.

36 (4) Subject to the exceptions provided in subsection g. of this
37 section, all association members and voting-eligible tenants shall
38 have the authority to vote in each election for each position of
39 membership on the executive board. The bylaws may limit voting
40 eligibility under this paragraph to association members in good
41 standing.

42 e. Unless the bylaws provide for the voting interest of each unit
43 to be proportional to the unit's value or size, each unit conveyed to
44 an owner shall be entitled to one vote regardless of the number of
45 association members, and voting-eligible tenants, who own or
46 reside in a unit.

47 f. Initial executive board elections in condominium
48 associations, governed under the "Condominium Act," P.L.1969,

1 c.257 (C.46:8B-1 et seq.), shall follow the notice timeline under
2 subsection b. of section 2 of P.L.1979, c.157 (C.46:8B-12.1), and
3 shall not be subject to the notice requirements under subsections a.
4 and d. of this section.

5 g. (1) It shall be permissible:

6 (a) for the association members and voting-eligible tenants of a
7 planned real estate development with units of different use types to
8 nominate and vote for some members of the executive board and,
9 pursuant to the mixed-use development's governing documents,
10 have other members of the executive board nominated and elected
11 by association members and voting-eligible tenants of units of a
12 different use type;

13 (b) for the association members and voting-eligible tenants of a
14 planned real estate development to nominate and vote only for some
15 members of the executive board based upon a distribution that
16 allocates votes with approximate proportionality to the number,
17 value, or size of units located in certain geographical areas within
18 the development;

19 (c) to limit the number of executive board members nominated
20 and elected by only certain association members, and voting-
21 eligible tenants, if that limit is based upon a classification intended
22 to further the election of one or more executive board members by
23 the association members, and voting-eligible tenants, of affordable
24 housing units that represent a minority of the units in a planned real
25 estate development; and

26 (d) for the association members, and voting-eligible tenants, of a
27 planned real estate development to nominate and vote for some
28 members of the executive board and, pursuant to the governing
29 documents, have other members of the executive board nominated
30 and elected by the association members, and voting-eligible tenants,
31 of one or more separate developments, so long as each
32 development's voting weight is approximately proportional, based
33 on the number, value, or size of the units;

34 (2) The executive board of an umbrella or master association
35 that does not directly contain units need not be elected by
36 individuals who are association members, and voting-eligible
37 tenants, with units within the geographical area of the umbrella or
38 master association, provided the members of the executive board
39 serve as executive board members of another planned real estate
40 development executive board, and have been nominated and elected
41 by the association members, and voting-eligible tenants, with units
42 in that planned real estate development, in compliance with this
43 section.

44 (3) The requirements of this section do not apply to members of
45 the executive board that may be appointed by the developer
46 pursuant to section 5 of P.L.1993, c.30 (C.45:22A-47).

1 6. Section 4 of P.L.1993, c.30 (C.45:22A-46) is amended to
2 read as follows:

3 4. The bylaws of the association, which shall initially be
4 recorded with the master deed shall include, in addition to any other
5 lawful provisions, the following:

6 a. A requirement that all meetings of the executive board,
7 except conference or working sessions at which no binding votes
8 are to be taken, shall be open to attendance by all unit owners, and
9 voting-eligible tenants where applicable, and adequate notice of any
10 such meeting shall be given to all unit owners, and voting-eligible
11 tenants where applicable, in such manner as the bylaws shall
12 prescribe; except that the executive board may exclude or restrict
13 attendance at those meetings, or portions of meetings, dealing with
14 (1) any matter the disclosure of which would constitute an
15 unwarranted invasion of individual privacy; (2) any pending or
16 anticipated litigation or contract negotiations; (3) any matters
17 falling within the attorney-client privilege, to the extent that
18 confidentiality is required in order for the attorney to exercise his
19 ethical duties as a lawyer, or (4) any matter involving the
20 employment, promotion, discipline or dismissal of a specific officer
21 or employee of the association. At each meeting required under this
22 subsection to be open to all unit owners, and voting-eligible tenants
23 where applicable, the participation of unit owners, and voting-
24 eligible tenants where applicable, in the proceedings or the
25 provision of a public comment session shall be at the discretion of
26 the executive board, minutes of the proceedings shall be taken, and
27 copies of those minutes shall be made available to all unit owners ,
28 and voting-eligible tenants where applicable, before the next open
29 meeting.

30 b. The method of calling meetings of unit owners , and voting-
31 eligible tenants where applicable, the percentage of unit owners ,
32 and voting-eligible tenants where applicable, or voting rights
33 required to make decisions and to constitute a quorum. The bylaws
34 may, nevertheless, provide that unit owners , and voting-eligible
35 tenants where applicable, may waive notice of meetings or may act
36 by written agreement without meetings.

37 c. The manner of collecting from unit owners their respective
38 shares of common expenses and the method of distribution to the
39 unit owners of their respective shares of common surplus or such
40 other application of common surplus as may be duly authorized by
41 the bylaws.

42 d. (1) The method by which the bylaws may be amended,
43 provided that no amendment shall be effective until recorded in the
44 same office as the then existing bylaws. The bylaws may also
45 provide a method for the adoption, amendment and enforcement of
46 reasonable administrative rules and regulations relating to the
47 operation, use, maintenance and enjoyment of the units and of the
48 common elements, including limited common elements.

1 (2) If association bylaws provide for no method of their
2 amendment by a vote of the association members, or only allow
3 association members to amend the bylaws through a majority vote
4 exceeding a two-thirds majority, then the members may amend the
5 bylaws by an affirmative vote of two-thirds of the total authorized
6 votes in the association. If the bylaws do not provide for a method
7 by which the members may call a meeting of the members to
8 conduct a vote to amend the bylaws or do not contain provisions
9 concerning the subject matter of subparagraphs (a) through (f) of
10 this paragraph, then a vote concerning an amendment to the bylaws
11 shall be conducted as follows:

12 (a) fifteen percent of the members may request a meeting of the
13 association's membership by executing a document requesting that
14 a special meeting of the membership be held, or if the annual
15 meeting of the membership will occur within 60 days of the date of
16 the request, then the amendment vote shall be held at the annual
17 meeting;

18 (b) if the vote will not take place at the annual meeting of the
19 association, the executive board shall schedule the special meeting
20 of the membership to occur within 60 days of the receipt of the
21 request, which special meeting shall be held between the hours of
22 7:00 p.m. and 8:00 p.m., except that if such day is a Sunday, the
23 meeting shall be held on the next day thereafter;

24 (c) the language of the amendment shall be submitted to the
25 association and shall be placed in appropriate form for distribution
26 to the membership, which amendment shall be mailed, hand-
27 delivered or, if the bylaws permit, electronically delivered, together
28 with the notice of the meeting to the membership at least 10 days
29 prior to the meeting;

30 (d) if permitted by the association's bylaws, the notice of the
31 meeting shall include a proxy ballot or absentee ballot with
32 instructions for the return of same, which instructions shall permit
33 facsimile or electronic mail delivery of the proxy ballot or absentee
34 ballot to the association and shall not require receipt of the proxy or
35 absentee ballot more than one business day prior to the meeting;

36 (e) if a sufficient number of ballots or proxies are not received
37 at the special or annual meeting to conclusively determine that the
38 proposed amendment has been approved or rejected, the meeting
39 shall be adjourned for a period of 30 days, or such longer period as
40 approved by the membership by approval of a motion to extend the
41 vote concerning the amendment, but in no event for longer than 11
42 months from when the notice of the meeting was sent, and all
43 proxies or ballots received prior to the extended date shall remain
44 valid if otherwise valid under the terms of the bylaws; and

45 (f) if the amendment is approved, the association shall promptly
46 record the same in the county recording office where the bylaws
47 were recorded.

1 (3) Paragraph (2) of this subsection shall not be construed to
2 require a vote to be held on an amendment to the bylaws that has
3 been voted on in the preceding 12 months of the initial meeting
4 request, made pursuant to subparagraph (a) of paragraph (2) of this
5 subsection.

6 (4) For the purposes of paragraph (2) of this subsection, the
7 number of total authorized votes in the association shall be based on
8 the whole number of units owned by someone entitled to
9 membership in the association after subtracting those owners
10 ineligible to vote because they are not in good standing.

11 (cf: P.L.1993, c.30, s.4)

12
13 7. Section 5 of P.L.1993, c.30 (C.45:22A-47) is amended to
14 read as follows:

15 5. a. Irrespective of the time set for developer control of the
16 association provided in the master deed, declaration of covenants
17 and restrictions, or other instruments of creation, control of the
18 association shall be surrendered to the owners in the following
19 manner:

20 (1) Sixty days after conveyance of 25 percent of the lots,
21 parcels, units or interests, not fewer than 25 percent of the members
22 of the executive board shall be elected by the owners and voting-
23 eligible tenants.

24 (2) Sixty days after conveyance of 50 percent of the lots,
25 parcels, units or interests, not fewer than 40 percent of the members
26 of the executive board shall be elected by the owners and voting-
27 eligible tenants.

28 (3) Sixty days after conveyance of 75 percent of the lots,
29 parcels, units or interests, the developer's control of the executive
30 board shall terminate, at which time the owners and voting-eligible
31 tenants shall elect the entire executive board; except that the
32 developer may retain the selection of one executive board member
33 so long as there are any units remaining unsold in the regular course
34 of business.

35 b. The percentages specified in subsection a. of this section
36 shall be calculated upon the basis of the whole number of units
37 entitled to membership in the association. The bylaws of the
38 association shall specify the number or proportion of votes of all
39 units conveyed to owners that shall be required for the election of
40 board members. Unless the bylaws provide **[otherwise]** for the
41 voting interest of each unit to be proportional to the unit's value or
42 size, each unit conveyed to an owner shall be entitled to one vote
43 regardless of the number of association members, and voting-
44 eligible tenants, residing in a unit. A developer may surrender
45 control of the executive board of the association before the time
46 specified in subsection a. of this section, if the **[owners]**
47 association members, and voting-eligible tenants, agree by a
48 majority vote to assume control.

1 c. Upon assumption by the owners of control of the executive
2 board of the association, the developer shall forthwith deliver to the
3 association all items and documents pertinent to the association,
4 such as, but not limited to, a copy of the master deed, declaration of
5 covenants and restrictions, documents of creation of the association,
6 bylaws, minute book including all minutes, any rules and
7 regulations, association funds and an accounting therefor, all
8 personal property, insurance policies, government permits, a
9 membership roster and all contracts and agreements relative to the
10 association.

11 d. The association when controlled by the owners and voting-
12 eligible tenants shall not take any action that would be detrimental
13 to the sale of units by the developer, and shall continue the same
14 level of maintenance, operation and services as immediately prior to
15 their assumption of control, until the last unit is sold.

16 e. From the time of conveyance of 75 percent of the lots,
17 parcels, units, or interests, until the last lot, parcel, unit, or interest
18 in the development is conveyed in the ordinary course of business,
19 the master deed, bylaws or declaration of covenants and restrictions
20 shall not require that more than 75 percent of the votes entitled to
21 be cast thereon be cast in the affirmative for a change in the bylaws
22 or regulations of the association.

23 f. The developer shall not be permitted to cast any votes
24 allocated to unsold lots, parcels, units, or interests, in order to
25 amend the master deed, bylaws, or any other document, for the
26 purpose of changing the permitted use of a lot, parcel, unit, or
27 interest, or for the purpose of reducing the common elements or
28 facilities.

29 (cf: P.L.1993, c.30, s.5)

30

31 8. This act shall take effect immediately.

32

33

34

STATEMENT

35

36 This bill enhances resident voting participation rights in common
37 interest communities.

38 New Jersey contains many planned real estate developments in
39 which an association, through its executive board, is responsible for
40 decisions concerning cost of assessments, the maintenance and use
41 of common areas and facilities within the community, as well as
42 other matters of importance to unit owners and tenants.

43 This bill defines an "association member" as a unit owner, and
44 may also include tenants to the extent that the association's bylaws
45 permit tenant membership in the association. Recently-established
46 associations may also permit the developer's membership if all the
47 units have not yet been sold. The bill also creates a definition of
48 "voting-eligible tenant," meaning a tenant residing in a

1 development that permits the tenant's participation in executive
2 board elections through its bylaws. The bill confines voting
3 eligibility to the association members and voting eligible tenants,
4 meaning more than one person per unit could potentially have
5 voting rights. However, the voting influence of a unit would not be
6 altered by the number of association members and voting-eligible
7 tenants connected to the unit.

8 The bill requires that the executive board shall ensure that notice
9 of any executive board election is provided to all association
10 members, and voting-eligible tenants, at least 30 days prior to the
11 election. The bill further requires that each resident-owner in good
12 standing shall have the authority to (1) nominate oneself or any
13 other resident-owner in good standing to run for any position on the
14 executive board; and (2) accept a nomination and run for any
15 membership position on the executive board. The bylaws may
16 permit others to also make nominations and run for executive board
17 positions. The bill requires common interest communities to also
18 allow all association members in good standing, and voting-eligible
19 tenants, to vote in each election for each position of membership on
20 the executive board. Certain types of associations, however, are
21 exempted from some of these requirements. These exemptions
22 consist of the following:

- 23 1) In a mixed-use development, certain executive board
24 members may be elected exclusively by the members and
25 voting-eligible tenants of units of the same use-type;
- 26 2) Associations may distribute vote shares proportionally to the
27 number of units in different geographical areas of the
28 development, so that the association members and voting
29 eligible-tenants in each area nominates and elects only
30 certain executive board members representing their part of
31 the development;
- 32 3) If residents of affordable housing represent a minority of
33 housing units in the development, then associations may
34 limit the number of executive board members that certain
35 association members and voting-eligible tenants may vote
36 for, in order to ensure the election of one or more affordable
37 housing residents;
- 38 4) An association may allow the members of the executive
39 board to be separately nominated and elected by the
40 association members, and voting-eligible tenants, of separate
41 developments, so long as each development's voting weight
42 is proportional, based on the number, value, or size of the
43 units; and
- 44 5) The executive board of an umbrella or master association
45 that does not directly contain units does not have to be
46 elected by individuals who are association members, and
47 voting-eligible tenants, of units within the geographical area
48 of the umbrella or master association, provided the members

1 of the executive board serve as executive board members of
2 another planned real estate development executive board,
3 and have been nominated and elected by the association
4 members, and voting-eligible tenants, of units in that
5 planned real estate development.

6 Under this bill, unless the bylaws provide for the voting interest
7 of each unit to be proportional to the unit's value or size, each unit
8 shall be entitled to one vote regardless of the number of association
9 members and voting-eligible tenants residing in a unit. The bill
10 requires each position on the executive board to be up for election
11 at least as often as once every four years.

12 Finally, most common interest community bylaws include a
13 method through which the bylaws themselves may be amended
14 through a vote of the association membership. For those
15 associations that do not include a method for amendment by the
16 association membership, or only allow association members to
17 amend the bylaws through a majority vote exceeding a two-thirds
18 majority, this bill establishes a mechanism through which
19 association members would be able to compel the executive board
20 to hold a meeting at which the association membership could amend
21 the bylaws through a two-thirds majority vote. Compelling this
22 vote would require 15 percent of the association members to present
23 a request for a meeting, at which the vote would be conducted. The
24 bill would not allow the use of this mechanism to require a vote on
25 an amendment to the bylaws that had already been voted on by the
26 association in the preceding 12 months.

ASSEMBLY HOUSING AND COMMUNITY DEVELOPMENT
COMMITTEE

STATEMENT TO

[First Reprint]
SENATE, No. 2492

with committee amendments

STATE OF NEW JERSEY

DATED: DECEMBER 5, 2016

The Assembly Housing and Community Development Committee reports favorably Senate Bill No. 2492 (1R) with committee amendments.

As amended by the committee, this bill establishes certain minimum voting participation rights in planned real estate developments.

The amended bill defines an “association member” as a unit owner, and may also include tenants to the extent that the association’s bylaws permit tenant membership in the association. Recently-established associations may also permit the developer’s membership if all the units have not yet been sold. The amended bill also defines a “voting-eligible tenant” as a tenant residing in a development that permits the tenant’s participation in executive board elections through its bylaws. The amended bill confers voting eligibility upon all association members and voting eligible tenants, meaning more than one person per unit could potentially have voting rights. However, the voting influence of a unit would not be altered by the number of association members and voting-eligible tenants connected to the unit.

The amended bill requires that no bylaw, rule or other provision of a governing document of an association may:

- 1) Provide for a term of a board member to be for more than 4 years;
- 2) Prohibit a tenant from casting a vote allocated to a unit if the bylaws otherwise permit tenant participation in an election of board members;
- 3) Provide for less than 14 nor more than 60 days’ notice of the meeting at which an election of board members is scheduled;
- 4) Prohibit a unit owner in good standing from nominating themselves or any other unit owner in good standing as a candidate for any membership position on the executive board;

- 5) Prohibit any unit owner in good standing from voting for any nominated candidate in an executive board election;
- 6) Prevent voting for a board member by electronic means where the executive board determines to employ voting in such manner and an owner consents to casting a vote in such manner; or
- 7) Provide for an allocation of votes other than one vote for each unit, except where the bylaws or other governing document provide for the voting interest to be proportional to a unit's value or size.

Certain types of associations, however, are exempted from some of these requirements. These exemptions consist of the following:

- 1) In a mixed-use development, certain executive board members may be elected exclusively by the association members and voting-eligible tenants of units of the same use-type;
- 2) An association may distribute vote shares proportionally to the number of units in different geographical areas of the development, so that the association members and voting eligible-tenants in each area nominate and elect only certain executive board members representing their part of the development;
- 3) If residents of affordable housing represent a minority of housing units in a development, then the association may limit the number of executive board members that certain association members and voting-eligible tenants may vote for, in order to ensure the election of one or more affordable housing residents to the executive board;
- 4) An association may allow the members of the executive board to be separately nominated and elected by the association members, and voting-eligible tenants, of separate developments, so long as each development's voting weight is proportional, based on the number, value, or size of the units; and
- 5) The executive board of an umbrella or master association that does not directly contain units does not have to be elected by individuals who are association members, and voting-eligible tenants, of units within the geographical area of the umbrella or master association, provided the members of the executive board serve as executive board members of another development executive board, and have been nominated and elected by the association members, and voting-eligible tenants, of units in that development.

Finally, for those developments that do not include a method for amendment by the association membership, or only allow association members to amend the bylaws through a majority vote that is higher than a two-thirds majority, the amended bill establishes a mechanism

though which association members would be able to compel the executive board to hold a meeting at which the association membership could amend the bylaws through a simple majority vote. Compelling this vote would require 15 percent of the association members to present a request for a meeting, at which the vote would be conducted. The amended bill would not allow the use of this mechanism to require a vote on an amendment to the bylaws that had already been voted on by the association in the preceding 12 months.

COMMITTEE AMENDMENTS:

The committee amendments adjust subsection b. of section 3 to narrow the section's focus from providing that association bylaws may allow tenant membership, to providing that the bylaws may allow voting-eligible tenants to participate in executive board elections.

In the provisions of the bill concerning developments that do not include a method for amendment by the association membership, or only allow association members to amend the bylaws through a majority vote that is higher than a two-thirds majority, the amendments establish a mechanism through which association members may compel the executive board to hold a meeting at which the association membership can amend the bylaws through a simple majority vote, as opposed to a two-thirds majority. The amendments require that when an amendment to the bylaws is approved under this process, a copy shall be provided to association members.

The committee amendments also include technical changes to the definition of "association member" and "voting-eligible tenant" in section 2, as well as further technical changes to subsection b. of section 3, section 5, and subsection d. of section 6.

Finally, the committee amendments modify section 5 of the bill to provide that no bylaw, rule or other provision of a governing document of an association may:

- Provide for a term of a board member to be for more than 4 years;
- Prohibit a tenant from casting a vote allocated to a unit if the bylaws otherwise permit tenant participation in an election of board members;
- Provide for less than 14 nor more than 60 days' notice of the meeting at which an election of board members is scheduled;
- Prohibit a unit owner in good standing from nominating themselves or any other unit owner in good standing as a candidate for any membership position on the executive board;
- Prohibit any unit owner in good standing from voting for any nominated candidate in an executive board election;
- Prevent voting for a board member by electronic means where the executive board determines to employ voting in

such manner and an owner consents to casting a vote in such manner; or

- Provide for an allocation of votes other than one vote for each unit, except where the bylaws or other governing document provide for the voting interest to be proportional to a unit's value or size.

SENATE COMMUNITY AND URBAN AFFAIRS COMMITTEE

STATEMENT TO

SENATE, No. 2492

with committee amendments

STATE OF NEW JERSEY

DATED: OCTOBER 13, 2016

The Senate Community and Urban Affairs Committee reports favorably and with committee amendments Senate Bill No. 2492.

As amended, this bill establishes certain minimum voting participation rights in planned real estate developments.

The amended bill defines an “association member” as a unit owner, and may also include tenants to the extent that the association’s bylaws permit tenant membership in the association. Recently-established associations may also permit the developer’s membership if all the units have not yet been sold. The amended bill also defines a “voting-eligible tenant” as a tenant residing in a development that permits the tenant’s participation in executive board elections through its bylaws. The amended bill confers voting eligibility upon all association members and voting eligible tenants, meaning more than one person per unit could potentially have voting rights. However, the voting influence of a unit would not be altered by the number of association members and voting-eligible tenants connected to the unit.

The amended bill requires the executive board to ensure that notice of any executive board election is provided to all association members, and voting-eligible tenants, at least 30 days prior to the election. The amended bill further guarantees that each resident-owner in good standing may (1) nominate oneself or any other resident-owner in good standing to run for any position on the executive board; and (2) accept a nomination and run for any membership position on the executive board. The bylaws may permit others to also make nominations and run for executive board positions. The amended bill also guarantees that all association members in good standing, and voting-eligible tenants, may vote in each election for each position of membership on the executive board. Unless the bylaws provide for the voting interest of each unit to be proportional to the unit’s value or size, each unit would be entitled to one vote regardless of the number of association members and voting-eligible tenants residing in a unit. The amended bill also requires each position on the executive board to be up for election at least as often as once every four years.

Certain types of associations, however, are exempted from some of these requirements. These exemptions consist of the following:

- 1) In a mixed-use development, certain executive board members may be elected exclusively by the association members and voting-eligible tenants of units of the same use-type;
- 2) An association may distribute vote shares proportionally to the number of units in different geographical areas of the development, so that the association members and voting eligible-tenants in each area nominate and elect only certain executive board members representing their part of the development;
- 3) If residents of affordable housing represent a minority of housing units in a development, then the association may limit the number of executive board members that certain association members and voting-eligible tenants may vote for, in order to ensure the election of one or more affordable housing residents to the executive board;
- 4) An association may allow the members of the executive board to be separately nominated and elected by the association members, and voting-eligible tenants, of separate developments, so long as each development's voting weight is proportional, based on the number, value, or size of the units; and
- 5) The executive board of an umbrella or master association that does not directly contain units does not have to be elected by individuals who are association members, and voting-eligible tenants, of units within the geographical area of the umbrella or master association, provided the members of the executive board serve as executive board members of another development executive board, and have been nominated and elected by the association members, and voting-eligible tenants, of units in that development.

Finally, for those developments that do not include a method for amendment by the association membership, or only allow association members to amend the bylaws through a majority vote that is higher than a two-thirds majority, the amended bill establishes a mechanism through which association members would be able to compel the executive board to hold a meeting at which the association membership could amend the bylaws through a two-thirds majority vote. Compelling this vote would require 15 percent of the association members to present a request for a meeting, at which the vote would be conducted. The amended bill would not allow the use of this mechanism to require a vote on an amendment to the bylaws that had already been voted on by the association in the preceding 12 months.

COMMITTEE AMENDMENTS:

The committee amendments refine the definition of “good standing” to clarify that this term only applies to unit owners with respect to their eligibility to vote in executive board elections or to amend the bylaws and their eligibility to nominate or run for any membership position on the executive board. Accordingly, meeting the requirements for good standing under the bill would only entitle a unit owner to these voting and nomination rights, and would not guarantee any other rights such as use of amenities.

The committee amendments also provide that a proposed amendment that is to be submitted for a vote by the association members must be unambiguous and consistent with applicable law and with the provisions of the bylaws that are not proposed to be amended, and if not in such condition, the proposed amendment must be revised to satisfy that requirement.

STATEMENT TO
[Second Reprint]
SENATE, No. 2492

with Assembly Floor Amendments
(Proposed by Assemblyman EUSTACE)

ADOPTED: FEBRUARY 15, 2017

These Assembly amendments insert a new section 3, and renumber sections 3 through 8 as sections 4 through 9. The amendments clarify that this bill, along with the provisions of P.L.1993, c.30 (C.45:22A-43 et al.), which this bill amends and supplements, is meant to apply to the associations of existing planned real estate developments. In accordance with recent court decisions, these amendments add language to subsection e. of section 1, section 3, and subsection a. of section 4, to clarify that the constraints placed on community associations by P.L.1993, c.30, shall not be limited by:

- the development's date of establishment;
- whether the developer has been subject to the registration requirements of "The Planned Real Estate Development Full Disclosure Act," P.L.1977, c.419 (C.45:22A-21 et seq.); or
- the exemption for offers and dispositions of fewer than 100 units under N.J.S.A.45:22A-25.

Additionally, these Assembly amendments add language to paragraph (1) of subsection g. of section 1, findings and declarations, and to the beginning of section 6, to clarify that the bill is intended to establish rights for resident-owners and certain others to participate in executive board elections. These amendments add language under paragraph (2) of subsection g. of section 1 to indicate that the intent of the bill is also to require, except under the very limited circumstances provided, a person must be elected in order to serve on the executive board.

Through adjustments to subsection d. of section 2, the amendments clarify that, as used in this bill, "owner" refers to a person who owns a housing unit, in the way that term is ordinarily used. The amendments add language to the end of the definition of "association member," subsection q. of section 2, to ensure that the inclusion of the developer in that definition is not construed to offer the developer a voting interest that conflicts with the timeline under N.J.S.A.45:22A-47, concerning the transfer of developer control to the owners. Through changes to the definition of "good standing" under subsection r. of section 2, the amendments incorporate an association member who is in full compliance with a settlement agreement for assessment payments, legal fees or other charges lawfully assessed, or has a pending, unresolved dispute concerning assessments, brought to the association's attention through alternative dispute resolution, or a pertinent court action.

Under subsection s. of section 2, the definition of a “voting-eligible tenant, and subsection b. of section 4, N.J.S.A.45:22A-43, the amendments provide that, an association may, but is not required to, permit tenant participation in executive board elections and/or tenant membership in the association.

Under subsection b. of section 4, in order to allow other individuals such as an owner’s spouse to potentially have association membership, the amendments remove the word “exclusively” from the requirement that membership is comprised exclusively of each owner.

Under subsection a. of section 6, the amendments provide that, with regard to an executive board election, the association shall not:

- under paragraph (3), fail to provide written notice to all association members of a call for nominations at least 30 days prior to the date on which owners are given notice of the meeting;
- under paragraph (5), fail to provide less than 14 or more than 60 days’ written notice of the meeting for which the election is scheduled, with the names of all candidates included;
- under paragraph (6), fail to use ballots that contain the names of all persons nominated; or
- under paragraph (10), establish election procedures that prohibit participation by the residents of low or moderate income units.

The amendments add additional language to subsection a. of section 6 to provide that:

- under paragraph (5), in the case of mailing notice of an election, it shall be effective when deposited in the mailbox with proper postage; and
- under paragraph (9), associations may permit more than one vote per unit, so long as each unit is allocated an equal number of votes, or a proportional number of votes based on each unit’s value or size.

These amendments provide, under subsection c. of section 6, that associations shall conform to the "New Jersey Nonprofit Corporation Act," N.J.S.A.15A:1-1 et seq., regarding ballot counting.

Under paragraph (1)(e) of subsection d. of section 6, the amendments allow association bylaws to provide that no more than one person from a single unit may serve on the governing board simultaneously.

The amendments adjust paragraph (3) of subsection d. of section 6 to provide that, except regarding appointments by the developer permitted under current law, and in planned real estate developments with under 10 units, an association shall:

- not allow a person to take an executive board position through appointment, unless the appointment is only to fill a vacancy in the executive board created by resignation, death, failure to maintain reasonable qualifications to be an executive board member or by removal in accordance with the bylaws; and

- ensure that, in order to serve on the executive board, a person is elected.

These amendments add language to subsection b. of section 7 to clarify that the bylaws of an association may allow an individual to waive his right to receive notice of an association meeting, if waived in writing.

Under paragraph (2) of subsection d. of section 7, these amendments add language clarifying that a vote by association members to amend the bylaws shall be open to all association members.

Under paragraph 2(b) of subsection d. of section 7, regarding the procedure to amend the bylaws by majority vote of association members in associations for which no such method otherwise exists, the amendments replace a requirement that the vote take place between 7:00 and 8:00 p.m. with a requirement for the vote to take place at a time when most association members are able to attend.

These amendments add a new paragraph (5) to subsection d. of section 7 to require that, unless necessary to comply with State, federal or local law, an association's executive board is only permitted to amend the bylaws without a vote open to all association members if notice is provided to all association members of the proposed amendment. In such case, the notice must include a ballot to reject the proposed amendment. If at least 10 percent of association members vote to reject the amendment within 30 days of its mailing, the amendment will be deemed defeated.

Under subsection c. of section 8, the amendments require that, upon assumption of control of the development by the owners, the developer shall supply the association with the governing documents, and other pertinent documents, within 60 days of the turnover date.

These amendments direct that the bill shall take effect immediately. However, the provisions of the bill concerning notice, nominations, ballot content, voting, and vote distribution in executive board elections will remain inoperative until the first day of the third month next following enactment and shall apply to each executive board election on or after that date.

Finally, these amendments also include technical adjustments to subsections b. and g. of section 1, subsection r. of section 2, section 3, subsection b. of section 4, section 5, subsections a. and d. of section 6, subsections a., b., and d. of section 7, and subsections a., b., and d. of subsection 8.

STATEMENT TO
[Third Reprint]
SENATE, No. 2492

with Assembly Floor Amendments
(Proposed by Assemblyman EUSTACE)

ADOPTED: MARCH 16, 2017

These Assembly floor amendments revise language within subsections e., f., and g. of section 1, the findings and declarations section, in order to clarify the legislative intent of this bill.

These Assembly amendments adjust the definition of “purchaser” or “owner,” in subsection d. of section 2, to ensure that, as used in P.L.1993, c.30 (C.45:22A-43 et seq.), the definition includes the holder of a “proprietary lease” as defined in section 3 of the “The Cooperative Recording Act of New Jersey,” P.L.1987, c.381 (C.46:8D-3).

These amendments adjust the definition of “association member,” in subsection q. of section 2, to ensure that the definition is not interpreted to alter the developer’s transition obligation from that permitted under section 5 of P.L.1993, c.30 (C.45:22A-47), or to give the developer a voting interest in executive board elections in addition to the developer’s existing authority to select one executive board member so long as unsold units remain in the development.

These amendments adjust the definition of “voting-eligible tenant,” in subsection s. of section 2, in order to ensure that a tenant may only fall into this category, and have the ability to vote in executive board elections if:

- The governing documents permit tenant participation in executive board elections; and
- It has either been the community’s standard practice prior to the enactment of this bill, to allow tenant election participation, or the owner has acknowledged the tenant’s right to vote in writing.

These amendments also adjust the same definition to clarify that it is not intended to affect voting as an agent of the owner through a proxy or power of attorney, and is not intended to include an “owner” or holder of a “proprietary lease” as those terms are defined in section 3 of the “The Cooperative Recording Act of New Jersey,” (C.46:8D-3).

Under paragraph (1) of subsection a. of section 4, the amendments clarify that P.L.1993, c.30 (C.45:22A-43 et seq.), applies to a development regardless of whether the developer has been exempted from the registration requirements of section 6 of "The Planned Real Estate Development Full Disclosure Act" ("PREDFDA"), P.L.1977, c.419 (C.45:22A-26), and remove a specific reference to the 100 unit exemption. Because of the more general reference to exemptions, the reference to the 100 unit exemption is no longer necessary.

These amendments add a new subsection b. to section 4, in order to ensure that nothing in the bill is interpreted to require the registration of developments that are not otherwise required to register under section 6 of P.L.1977, c.419 (C.45:22A-26).

These amendments add language to section 6 to require associations to hold elections in accordance with the provisions of their governing documents, so long as they do not conflict with the provisions of this bill. If the governing documents do not set a specific time or interval, the amendments require elections to be held at two year intervals. If an association has not held an election in compliance with its governing documents in two or more years, the amendments require it to hold an election within 90 days of submission to any current executive board member of a petition signed by twenty-five or more percent of association members in good standing, but in no event less than the number of association members required to meet quorum requirements. If an association has no remaining board members, and association members do not act on petition or by majority, then the amendments allow any association member or group thereof may, at common expense and, upon written notice to all owners, petition a court for authority to act temporarily in the interests of the association, and hold an election within 90 days of the date of the court order. The amendments require any proxies used by an association to contain a prominent notice that use of the proxy is voluntary on the part of the granting owner, that it can be revoked at any time before the vote is cast, and that absentee ballots are available. The amendments require that an association may not use proxies for a board member election without also making absentee ballots available.

These amendments re-letter subsection a. of section 6 as subsection c., and exclude planned real estate developments with fewer than 50 units from the election restrictions under that subsection except for the restrictions of paragraphs (9) and (10), from subsection e. of section 6, concerning ballot counting, and from the prohibition on appointments to the executive board, established under paragraph (3) of subsection f. of section 6. However, under subsection b. of section 6, these amendments require that, in an executive board election within an association of a development with fewer than 50 units, certain minimum standards must still be met, including: (1) provision of adequate advance notice of an election, (2) provision of the ability to nominate and vote for any association member in good standing, (3) provision of an opportunity to review any candidacy qualifications such that the owner can be a candidate for election to the board, (4) provision of ready access to full information on when and how to vote, and (5) the counting of ballots and verification of eligibility to vote, which are all to be conducted in a non-fraudulent manner.

These amendments clarify that the election requirements of subsection c. of section 6 apply to associations with 50 or more units, and to master associations of 50 or more units in which elections to the master board are not from each individual project comprising the master association. Under paragraph 2 of that subsection, the amendments provide that an association may not prohibit an individual acting under a valid power of attorney or proxy from voting. Under

paragraph 4 of that subsection, the amendments provide that the period for submitting nominations for the executive board must not be less than 14 days from the mailing of the request for nominations. Under paragraph 5 of that subsection, the amendments provide that, in the notice of an executive board election, the ballots shall, list all candidates nominated, in alphabetical order by last name. Under that paragraph, the amendments further provide that election notice may only be sent electronically if the association member has agreed in writing to accept notice by electronic means, or the governing documents permit electronic notices, provided another form of voting by absentee balloting or proxy voting is available.

These amendments add language to subparagraph (1)(e) of subsection f. of section 6 to exclude representatives of the developer from the requirement that a development's bylaws may be amended to limit representation on an executive board to one individual per unit. This exclusion would only apply prior to surrender of control to the owners pursuant to section 5 of P.L.1993, c.30 (C.45:22A-47).

Finally, these amendments make technical changes to subsections d., q., and s. of section 2, section 6, subsection d. of section 7, and subsections b. and c. of section 8.

ASSEMBLY, No. 4091

STATE OF NEW JERSEY 217th LEGISLATURE

INTRODUCED SEPTEMBER 15, 2016

Sponsored by:

Assemblyman TIM EUSTACE

District 38 (Bergen and Passaic)

Assemblyman NICHOLAS CHIARAVALLOTI

District 31 (Hudson)

Assemblyman RAJ MUKHERJI

District 33 (Hudson)

SYNOPSIS

Enhances resident voting participation rights in common interest communities.

CURRENT VERSION OF TEXT

As introduced.



(Sponsorship Updated As Of: 12/6/2016)

A4091 EUSTACE, CHIARAVALLOTI

2

1 AN ACT concerning the governance of common interest community
2 associations, amending P.L.1977, c.419, and amending and
3 supplementing P.L.1993, c.30.

4

5 **BE IT ENACTED** by the Senate and General Assembly of the State
6 of New Jersey:

7

8 1. (New section) The Legislature finds and declares that:

9 a. In addition to living under State, county, and municipal
10 government, recent estimates conclude that over one million New
11 Jersey residents currently live under the governance of a common
12 interest community association, such as a condominium,
13 cooperative, or homeowners' association;

14 b. The owners and tenants living in these communities often
15 benefit from minimized maintenance responsibilities and greater
16 assurances that neighboring properties will follow a predictable
17 development scheme;

18 c. Along with these benefits, living under a community
19 association also creates the necessity of paying assessments and
20 fees in addition to the State and local taxes that other State residents
21 pay, and requires compliance with property regulations that may be
22 more stringent than those required by municipal government alone;

23 d. Because of the significant influence community associations
24 have over the lives of their residents and because community
25 associations are creatures of State law, it is unfair and runs contrary
26 to American democratic values for these communities to be
27 governed by trustees who are not elected in a fair and open manner;

28 e. Residents living under community associations should have
29 the right to freely elect the members of the executive boards that
30 govern the communities, and to run for executive board positions;
31 and

32 f. It is necessary and in the public interest for the Legislature
33 to enact legislation establishing basic election participation rights
34 for the residents of common interest communities.

35

36 2. Section 3 of P.L.1977, c.419 (C.45:22A-23) is amended to
37 read as follows:

38 3. As used in this act unless the context clearly indicates
39 otherwise:

40 a. "Disposition" means any sales, contract, lease, assignment,
41 or other transaction concerning a planned real estate development.

42 b. "Developer" or "subdivider" means any person who disposes
43 or offers to dispose of any lot, parcel, unit, or interest in a planned
44 real estate development.

EXPLANATION – Matter enclosed in bold-faced brackets [thus] in the above bill is not enacted and is intended to be omitted in the law.

Matter underlined thus is new matter.

1 c. "Offer" means any inducement, solicitation, advertisement,
2 or attempt to encourage a person to acquire a unit, parcel, lot, or
3 interest in a planned real estate development.

4 d. "Purchaser" or "owner" means any person or persons who
5 acquires a legal or equitable interest in a unit, lot, or parcel in a
6 planned real estate development, and shall be deemed to include a
7 prospective purchaser or owner. Following termination of
8 developer control of the executive board, pursuant to paragraph (3)
9 of subsection a. of section 5 of P.L.1993, c.30 (C.45:22A-47), this
10 definition shall not be construed to create a voting right, or any
11 other right, for a prospective purchaser or prospective owner.

12 e. "State" means the State of New Jersey.

13 f. "Commissioner" means the Commissioner of Community
14 Affairs.

15 g. "Person" shall be defined as in R.S.1:1-2.

16 h. "Planned real estate development" or "development" means
17 any real property situated within the State, whether contiguous or
18 not, which consists of or will consist of, separately owned areas,
19 irrespective of form, be it lots, parcels, units, or interest, and which
20 are offered or disposed of pursuant to a common promotional plan,
21 and providing for common or shared elements or interests in real
22 property. This definition shall not apply to any form of
23 timesharing.

24 This definition shall specifically include, but shall not be limited
25 to, property subject to the "Condominium Act," P.L.1969, c.257
26 (C.46:8B-1 et seq.), any form of homeowners' association, any
27 housing cooperative or to any community trust or other trust device.

28 This definition shall be construed liberally to effectuate the
29 purposes of this act.

30 i. "Common promotional plan" means any offer for the
31 disposition of lots, parcels, units or interests of real property by a
32 single person or group of persons acting in concert, where such lots,
33 parcels, units or interests are contiguous, or are known, designated
34 or advertised as a common entity or by a common name.

35 j. "Advertising" means and includes the publication or causing
36 to be published of any information offering for disposition or for
37 the purpose of causing or inducing any other person to purchase an
38 interest in a planned real estate development, including the land
39 sales contract to be used and any photographs or drawings or artist's
40 representations of physical conditions or facilities on the property
41 existing or to exist by means of any:

- 42 (1) Newspaper or periodical;
- 43 (2) Radio or television broadcast;
- 44 (3) Written or printed or photographic matter;
- 45 (4) Billboards or signs;
- 46 (5) Display of model houses or units;

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1 (6) Material used in connection with the disposition or offer of
2 the development by radio, television, telephone or any other
3 electronic means; or

4 (7) Material used by developers or their agents to induce
5 prospective purchasers to visit the development, particularly
6 vacation certificates which require the holders of such certificates to
7 attend or submit to a sales presentation by a developer or his agents.

8 "Advertising" does not mean and shall not be deemed to include:
9 Stockholder communications such as annual reports and interim
10 financial reports, proxy materials, registration statements, securities
11 prospectuses, applications for listing securities on stock exchanges,
12 and the like; all communications addressed to and relating to the
13 account of any person who has previously executed a contract for
14 the purchase of the subdivider's lands except when directed to the
15 sale of additional lands.

16 k. "Non-binding reservation agreement" means an agreement
17 between the developer and a purchaser and which may be canceled
18 without penalty by either party upon written notice at any time prior
19 to the formation of a contract for the disposition of any lot, parcel,
20 unit or interest in a planned real estate development.

21 l. "Blanket encumbrance" means a trust deed, mortgage,
22 judgment, or any other lien or encumbrance, including an option or
23 contract to sell or a trust agreement, affecting a development or
24 affecting more than one lot, unit, parcel, or interest therein, but does
25 not include any lien or other encumbrance arising as the result of
26 the imposition of any tax assessment by any public authority.

27 m. "Conversion" means any change with respect to a real estate
28 development or subdivision, apartment complex or other entity
29 concerned with the ownership, use or management of real property
30 which would make such entity a planned real estate development.

31 n. "Association" means an association for the management of
32 common elements and facilities, organized pursuant to section 1 of
33 P.L.1993, c.30 (C.45:22A-43).

34 o. "Executive board" means the executive board of an
35 association, as provided for in section 3 of P.L.1993, c.30
36 (C.45:22A- 45).

37 p. "Unit" means any lot, parcel, unit or interest in a planned
38 real estate development that is, or is intended to be, a separately
39 owned area thereof.

40 q. "Association member" means the owner of a unit within a
41 planned real estate development, or a unit's tenant or the developer
42 to the extent that the bylaws permit tenant or developer membership
43 in the association pursuant to subsection b. of section 1 of P.L.1993,
44 c.30 (C.45:22A-43).

45 r. "Good standing" means the status assigned to unit owners
46 who meet qualifications not more excessive than compliance with
47 the development's governing documents, and who are current on
48 the payment of all fees lawfully assigned to the unit.

1 s. “Voting-eligible tenant” means a tenant of a unit within a
2 planned real estate development that permits the tenant’s
3 participation in executive board elections through its bylaws, but
4 shall not include a tenant whose right to vote is derived solely as an
5 agent of the unit owner through a proxy or power of attorney.

6 (cf: P.L.2006, c.63, s.39)

7
8 3. Section 1 of P.L.1993, c.30 (C.45:22A-43) is amended to
9 read as follows:

10 1. a. A developer subject to the registration requirements of
11 section 6 of P.L.1977, c.419 (C.45:22A-26) shall organize or cause
12 to be organized an association whose obligation it shall be to
13 manage the common elements and facilities. The association shall
14 be formed on or before the filing of the master deed or declaration
15 of covenants and restrictions, and may be formed as a for-profit or
16 nonprofit corporation, unincorporated association, or any other form
17 permitted by law.

18 b. Membership in the association of a planned real estate
19 development shall be comprised exclusively of each unit owner
20 within the planned real estate development, and may include the
21 developer if the development contains unsold lots, parcels, units, or
22 interests. If permitted by the association’s bylaws, a tenant may
23 also be entitled to association membership. However, a tenant
24 entitled to association membership shall have only the same voting
25 rights as unit owners if the tenant is a voting-eligible tenant.
26 Pursuant to subsection e. of section 5 of P.L. , c. (C.)
27 (pending before the Legislature as this bill), the voting influence of
28 a unit shall not be altered by the number of association members,
29 and voting-eligible tenants, who own or reside in the unit.

30 (cf: P.L.1993, c.30, s.1)

31
32 4. Section 3 of P.L.1993, c.30 (C.45:22A-45) is amended to
33 read as follows:

34 3. a. The form of administration of an association organized
35 pursuant to section 1 of P.L.1993, c.30 (C.45:22A-43) shall provide
36 for the election of an executive board, elected by the association
37 members and voting-eligible tenants, and responsible to the
38 members of the association pursuant to section 4 of P.L.1993, c.30
39 (C.45:22A-46), through which the powers of the association shall
40 be exercised and its functions performed.

41 b. Subject to the master deed, declaration of covenants and
42 restrictions, bylaws or other instruments of creation, subsection d.
43 of this section, and the laws of the State, the executive board may
44 act in all instances on behalf of the association.

45 c. The members of the executive board appointed by the
46 developer shall be liable as fiduciaries to the owners for their acts
47 or omissions.

1 d. During control of the executive board by the developer,
2 copies of the annual audit of association funds shall be available for
3 inspection by owners or their authorized representative at the
4 project site.

5 (cf: P.L.1993, c.30, s.3)

6
7 5. (New section) a. Notice of the right to nominate candidates
8 for election to the executive board shall be mailed, hand-delivered
9 or, where permitted by the bylaws, electronically delivered to each
10 association member and each voting-eligible tenant at least 30 days
11 prior to the meeting at which an election of the members of the
12 executive board will be conducted.

13 b. Each position on the executive board shall be up for election
14 every four years, except that the bylaws may provide for more
15 frequent elections.

16 c. If the bylaws permit tenant participation in executive board
17 elections, then a tenant may exercise the voting rights of a unit
18 owner with whom he has contracted a leasehold interest.

19 d. (1) Subject to the exceptions under subsection g. of this
20 section, a resident-owner in good standing shall have the authority
21 to:

22 (a) nominate himself or any other resident-owner in good
23 standing to run for any membership position on the executive board
24 in an election at least 21 days subsequent to the nomination; and

25 (b) run for any membership position on the executive board
26 after obtaining a nomination at least 21 days prior to the election.

27 (2) In the case of a person nominated by someone other than
28 themselves, if the nominated person accepts the nomination in
29 writing within seven days of being nominated and the number of
30 candidates is less than the number of executive board positions
31 open for election, the 21-day requirement stated in paragraph (1) of
32 this subsection shall not apply.

33 (3) The bylaws may extend the right to nominate and run for
34 positions on the executive board provided pursuant to paragraph (1)
35 of this subsection, to all unit owners, all tenants, or others.

36 (4) Subject to the exceptions provided in subsection g. of this
37 section, all association members and voting-eligible tenants shall
38 have the authority to vote in each election for each position of
39 membership on the executive board. The bylaws may limit voting
40 eligibility under this paragraph to association members in good
41 standing.

42 e. Unless the bylaws provide for the voting interest of each unit
43 to be proportional to the unit's value or size, each unit conveyed to
44 an owner shall be entitled to one vote regardless of the number of
45 association members, and voting-eligible tenants, who own or
46 reside in a unit.

47 f. Initial executive board elections in condominium
48 associations, governed under the "Condominium Act," P.L.1969,

1 c.257 (C.46:8B-1 et seq.), shall follow the notice timeline under
2 subsection b. of section 2 of P.L.1979, c.157 (C.46:8B-12.1), and
3 shall not be subject to the notice requirements under subsections a.
4 and d. of this section.

5 g. (1) It shall be permissible:

6 (a) for the association members and voting-eligible tenants of a
7 planned real estate development with units of different use types to
8 nominate and vote for some members of the executive board and,
9 pursuant to the mixed-use development's governing documents,
10 have other members of the executive board nominated and elected
11 by association members and voting-eligible tenants of units of a
12 different use type;

13 (b) for the association members and voting-eligible tenants of a
14 planned real estate development to nominate and vote only for some
15 members of the executive board based upon a distribution that
16 allocates votes with approximate proportionality to the number,
17 value, or size of units located in certain geographical areas within
18 the development;

19 (c) to limit the number of executive board members nominated
20 and elected by only certain association members, and voting-
21 eligible tenants, if that limit is based upon a classification intended
22 to further the election of one or more executive board members by
23 the association members, and voting-eligible tenants, of affordable
24 housing units that represent a minority of the units in a planned real
25 estate development; and

26 (d) for the association members, and voting-eligible tenants, of a
27 planned real estate development to nominate and vote for some
28 members of the executive board and, pursuant to the governing
29 documents, have other members of the executive board nominated
30 and elected by the association members, and voting-eligible tenants,
31 of one or more separate developments, so long as each
32 development's voting weight is approximately proportional, based
33 on the number, value, or size of the units;

34 (2) The executive board of an umbrella or master association
35 that does not directly contain units need not be elected by
36 individuals who are association members, and voting-eligible
37 tenants, with units within the geographical area of the umbrella or
38 master association, provided the members of the executive board
39 serve as executive board members of another planned real estate
40 development executive board, and have been nominated and elected
41 by the association members, and voting-eligible tenants, with units
42 in that planned real estate development, in compliance with this
43 section.

44 (3) The requirements of this section do not apply to members of
45 the executive board that may be appointed by the developer
46 pursuant to section 5 of P.L.1993, c.30 (C.45:22A-47).

1 6. Section 4 of P.L.1993, c.30 (C.45:22A-46) is amended to
2 read as follows:

3 4. The bylaws of the association, which shall initially be
4 recorded with the master deed shall include, in addition to any other
5 lawful provisions, the following:

6 a. A requirement that all meetings of the executive board,
7 except conference or working sessions at which no binding votes
8 are to be taken, shall be open to attendance by all unit owners, and
9 voting-eligible tenants where applicable, and adequate notice of any
10 such meeting shall be given to all unit owners, and voting-eligible
11 tenants where applicable, in such manner as the bylaws shall
12 prescribe; except that the executive board may exclude or restrict
13 attendance at those meetings, or portions of meetings, dealing with
14 (1) any matter the disclosure of which would constitute an
15 unwarranted invasion of individual privacy; (2) any pending or
16 anticipated litigation or contract negotiations; (3) any matters
17 falling within the attorney-client privilege, to the extent that
18 confidentiality is required in order for the attorney to exercise his
19 ethical duties as a lawyer, or (4) any matter involving the
20 employment, promotion, discipline or dismissal of a specific officer
21 or employee of the association. At each meeting required under this
22 subsection to be open to all unit owners, and voting-eligible tenants
23 where applicable, the participation of unit owners, and voting-
24 eligible tenants where applicable, in the proceedings or the
25 provision of a public comment session shall be at the discretion of
26 the executive board, minutes of the proceedings shall be taken, and
27 copies of those minutes shall be made available to all unit owners ,
28 and voting-eligible tenants where applicable, before the next open
29 meeting.

30 b. The method of calling meetings of unit owners , and voting-
31 eligible tenants where applicable, the percentage of unit owners ,
32 and voting-eligible tenants where applicable, or voting rights
33 required to make decisions and to constitute a quorum. The bylaws
34 may, nevertheless, provide that unit owners , and voting-eligible
35 tenants where applicable, may waive notice of meetings or may act
36 by written agreement without meetings.

37 c. The manner of collecting from unit owners their respective
38 shares of common expenses and the method of distribution to the
39 unit owners of their respective shares of common surplus or such
40 other application of common surplus as may be duly authorized by
41 the bylaws.

42 d. (1) The method by which the bylaws may be amended,
43 provided that no amendment shall be effective until recorded in the
44 same office as the then existing bylaws. The bylaws may also
45 provide a method for the adoption, amendment and enforcement of
46 reasonable administrative rules and regulations relating to the
47 operation, use, maintenance and enjoyment of the units and of the
48 common elements, including limited common elements.

1 (2) If association bylaws provide for no method of their
2 amendment by a vote of the association members, or only allow
3 association members to amend the bylaws through a majority vote
4 exceeding a two-thirds majority, then the members may amend the
5 bylaws by an affirmative vote of two-thirds of the total authorized
6 votes in the association. If the bylaws do not provide for a method
7 by which the members may call a meeting of the members to
8 conduct a vote to amend the bylaws or do not contain provisions
9 concerning the subject matter of subparagraphs (a) through (f) of
10 this paragraph, then a vote concerning an amendment to the bylaws
11 shall be conducted as follows:

12 (a) fifteen percent of the members may request a meeting of the
13 association's membership by executing a document requesting that
14 a special meeting of the membership be held, or if the annual
15 meeting of the membership will occur within 60 days of the date of
16 the request, then the amendment vote shall be held at the annual
17 meeting;

18 (b) if the vote will not take place at the annual meeting of the
19 association, the executive board shall schedule the special meeting
20 of the membership to occur within 60 days of the receipt of the
21 request, which special meeting shall be held between the hours of
22 7:00 p.m. and 8:00 p.m., except that if such day is a Sunday, the
23 meeting shall be held on the next day thereafter;

24 (c) the language of the amendment shall be submitted to the
25 association and shall be placed in appropriate form for distribution
26 to the membership, which amendment shall be mailed, hand-
27 delivered or, if the bylaws permit, electronically delivered, together
28 with the notice of the meeting to the membership at least 10 days
29 prior to the meeting;

30 (d) if permitted by the association's bylaws, the notice of the
31 meeting shall include a proxy ballot or absentee ballot with
32 instructions for the return of same, which instructions shall permit
33 facsimile or electronic mail delivery of the proxy ballot or absentee
34 ballot to the association and shall not require receipt of the proxy or
35 absentee ballot more than one business day prior to the meeting;

36 (e) if a sufficient number of ballots or proxies are not received
37 at the special or annual meeting to conclusively determine that the
38 proposed amendment has been approved or rejected, the meeting
39 shall be adjourned for a period of 30 days, or such longer period as
40 approved by the membership by approval of a motion to extend the
41 vote concerning the amendment, but in no event for longer than 11
42 months from when the notice of the meeting was sent, and all
43 proxies or ballots received prior to the extended date shall remain
44 valid if otherwise valid under the terms of the bylaws; and

45 (f) if the amendment is approved, the association shall promptly
46 record the same in the county recording office where the bylaws
47 were recorded.

1 (3) Paragraph (2) of this subsection shall not be construed to
2 require a vote to be held on an amendment to the bylaws that has
3 been voted on in the preceding 12 months of the initial meeting
4 request, made pursuant to subparagraph (a) of paragraph (2) of this
5 subsection.

6 (4) For the purposes of paragraph (2) of this subsection, the
7 number of total authorized votes in the association shall be based on
8 the whole number of units owned by someone entitled to
9 membership in the association after subtracting those owners
10 ineligible to vote because they are not in good standing.

11 (cf: P.L.1993, c.30, s.4)

12
13 7. Section 5 of P.L.1993, c.30 (C.45:22A-47) is amended to
14 read as follows:

15 5. a. Irrespective of the time set for developer control of the
16 association provided in the master deed, declaration of covenants
17 and restrictions, or other instruments of creation, control of the
18 association shall be surrendered to the owners in the following
19 manner:

20 (1) Sixty days after conveyance of 25 percent of the lots,
21 parcels, units or interests, not fewer than 25 percent of the members
22 of the executive board shall be elected by the owners and voting-
23 eligible tenants.

24 (2) Sixty days after conveyance of 50 percent of the lots,
25 parcels, units or interests, not fewer than 40 percent of the members
26 of the executive board shall be elected by the owners and voting-
27 eligible tenants.

28 (3) Sixty days after conveyance of 75 percent of the lots,
29 parcels, units or interests, the developer's control of the executive
30 board shall terminate, at which time the owners and voting-eligible
31 tenants shall elect the entire executive board; except that the
32 developer may retain the selection of one executive board member
33 so long as there are any units remaining unsold in the regular course
34 of business.

35 b. The percentages specified in subsection a. of this section
36 shall be calculated upon the basis of the whole number of units
37 entitled to membership in the association. The bylaws of the
38 association shall specify the number or proportion of votes of all
39 units conveyed to owners that shall be required for the election of
40 board members. Unless the bylaws provide **[otherwise]** for the
41 voting interest of each unit to be proportional to the unit's value or
42 size, each unit conveyed to an owner shall be entitled to one vote
43 regardless of the number of association members, and voting-
44 eligible tenants, residing in a unit. A developer may surrender
45 control of the executive board of the association before the time
46 specified in subsection a. of this section, if the **[owners]**
47 association members, and voting-eligible tenants, agree by a
48 majority vote to assume control.

1 c. Upon assumption by the owners of control of the executive
2 board of the association, the developer shall forthwith deliver to the
3 association all items and documents pertinent to the association,
4 such as, but not limited to, a copy of the master deed, declaration of
5 covenants and restrictions, documents of creation of the association,
6 bylaws, minute book including all minutes, any rules and
7 regulations, association funds and an accounting therefor, all
8 personal property, insurance policies, government permits, a
9 membership roster and all contracts and agreements relative to the
10 association.

11 d. The association when controlled by the owners and voting-
12 eligible tenants shall not take any action that would be detrimental
13 to the sale of units by the developer, and shall continue the same
14 level of maintenance, operation and services as immediately prior to
15 their assumption of control, until the last unit is sold.

16 e. From the time of conveyance of 75 percent of the lots,
17 parcels, units, or interests, until the last lot, parcel, unit, or interest
18 in the development is conveyed in the ordinary course of business,
19 the master deed, bylaws or declaration of covenants and restrictions
20 shall not require that more than 75 percent of the votes entitled to
21 be cast thereon be cast in the affirmative for a change in the bylaws
22 or regulations of the association.

23 f. The developer shall not be permitted to cast any votes
24 allocated to unsold lots, parcels, units, or interests, in order to
25 amend the master deed, bylaws, or any other document, for the
26 purpose of changing the permitted use of a lot, parcel, unit, or
27 interest, or for the purpose of reducing the common elements or
28 facilities.

29 (cf: P.L.1993, c.30, s.5)

30

31 8. This act shall take effect immediately.

32

33

34

STATEMENT

35

36 This bill enhances resident voting participation rights in common
37 interest communities.

38 New Jersey contains many planned real estate developments in
39 which an association, through its executive board, is responsible for
40 decisions concerning cost of assessments, the maintenance and use
41 of common areas and facilities within the community, as well as
42 other matters of importance to unit owners and tenants.

43 This bill defines an "association member" as a unit owner, and
44 may also include tenants to the extent that the association's bylaws
45 permit tenant membership in the association. Recently-established
46 associations may also permit the developer's membership if all the
47 units have not yet been sold. The bill also creates a definition of
48 "voting-eligible tenant," meaning a tenant residing in a

1 development that permits the tenant's participation in executive
2 board elections through its bylaws. The bill confines voting
3 eligibility to the association members and voting eligible tenants,
4 meaning more than one person per unit could potentially have
5 voting rights. However, the voting influence of a unit would not be
6 altered by the number of association members and voting-eligible
7 tenants connected to the unit.

8 The bill requires that the executive board shall ensure that notice
9 of any executive board election is provided to all association
10 members, and voting-eligible tenants, at least 30 days prior to the
11 election. The bill further requires that each resident-owner in good
12 standing shall have the authority to (1) nominate oneself or any
13 other resident-owner in good standing to run for any position on the
14 executive board; and (2) accept a nomination and run for any
15 membership position on the executive board. The bylaws may
16 permit others to also make nominations and run for executive board
17 positions. The bill requires common interest communities to also
18 allow all association members in good standing, and voting-eligible
19 tenants, to vote in each election for each position of membership on
20 the executive board. Certain types of associations, however, are
21 exempted from some of these requirements. These exemptions
22 consist of the following:

- 23 1) In a mixed-use development, certain executive board
24 members may be elected exclusively by the members and
25 voting-eligible tenants of units of the same use-type;
- 26 2) Associations may distribute vote shares proportionally to the
27 number of units in different geographical areas of the
28 development, so that the association members and voting
29 eligible-tenants in each area nominates and elects only
30 certain executive board members representing their part of
31 the development;
- 32 3) If residents of affordable housing represent a minority of
33 housing units in the development, then associations may
34 limit the number of executive board members that certain
35 association members and voting-eligible tenants may vote
36 for, in order to ensure the election of one or more affordable
37 housing residents;
- 38 4) An association may allow the members of the executive
39 board to be separately nominated and elected by the
40 association members, and voting-eligible tenants, of separate
41 developments, so long as each development's voting weight
42 is proportional, based on the number, value, or size of the
43 units; and
- 44 5) The executive board of an umbrella or master association
45 that does not directly contain units does not have to be
46 elected by individuals who are association members, and
47 voting-eligible tenants, of units within the geographical area
48 of the umbrella or master association, provided the members

1 of the executive board serve as executive board members of
2 another planned real estate development executive board,
3 and have been nominated and elected by the association
4 members, and voting-eligible tenants, of units in that
5 planned real estate development.

6 Under this bill, unless the bylaws provide for the voting interest
7 of each unit to be proportional to the unit's value or size, each unit
8 shall be entitled to one vote regardless of the number of association
9 members and voting-eligible tenants residing in a unit. The bill
10 requires each position on the executive board to be up for election
11 at least as often as once every four years.

12 Finally, most common interest community bylaws include a
13 method through which the bylaws themselves may be amended
14 through a vote of the association membership. For those
15 associations that do not include a method for amendment by the
16 association membership, or only allow association members to
17 amend the bylaws through a majority vote exceeding a two-thirds
18 majority, this bill establishes a mechanism through which
19 association members would be able to compel the executive board
20 to hold a meeting at which the association membership could amend
21 the bylaws through a two-thirds majority vote. Compelling this
22 vote would require 15 percent of the association members to present
23 a request for a meeting, at which the vote would be conducted. The
24 bill would not allow the use of this mechanism to require a vote on
25 an amendment to the bylaws that had already been voted on by the
26 association in the preceding 12 months.

ASSEMBLY HOUSING AND COMMUNITY DEVELOPMENT
COMMITTEE

STATEMENT TO
ASSEMBLY, No. 4091

with committee amendments

STATE OF NEW JERSEY

DATED: DECEMBER 5, 2016

The Assembly Housing and Community Development Committee reports favorably Assembly Bill No. 4091 with committee amendments.

As amended by the committee, this bill establishes certain minimum voting participation rights in planned real estate developments.

The amended bill defines an “association member” as a unit owner, and may also include tenants to the extent that the association’s bylaws permit tenant membership in the association. Recently-established associations may also permit the developer’s membership if all the units have not yet been sold. The amended bill also defines a “voting-eligible tenant” as a tenant residing in a development that permits the tenant’s participation in executive board elections through its bylaws. The amended bill confers voting eligibility upon all association members and voting eligible tenants, meaning more than one person per unit could potentially have voting rights. However, the voting influence of a unit would not be altered by the number of association members and voting-eligible tenants connected to the unit.

The amended bill requires that no bylaw, rule or other provision of a governing document of an association may:

- 1) Provide for a term of a board member to be for more than 4 years;
- 2) Prohibit a tenant from casting a vote allocated to a unit if the bylaws otherwise permit tenant participation in an election of board members;
- 3) Provide for less than 14 nor more than 60 days’ notice of the meeting at which an election of board members is scheduled;
- 4) Prohibit a unit owner in good standing from nominating themselves or any other unit owner in good standing as a candidate for any membership position on the executive board;
- 5) Prohibit any unit owner in good standing from voting for any nominated candidate in an executive board election;

- 6) Prevent voting for a board member by electronic means where the executive board determines to employ voting in such manner and an owner consents to casting a vote in such manner; or
- 7) Provide for an allocation of votes other than one vote for each unit, except where the bylaws or other governing document provide for the voting interest to be proportional to a unit's value or size.

Certain types of associations, however, are exempted from some of these requirements. These exemptions consist of the following:

- 1) In a mixed-use development, certain executive board members may be elected exclusively by the association members and voting-eligible tenants of units of the same use-type;
- 2) An association may distribute vote shares proportionally to the number of units in different geographical areas of the development, so that the association members and voting eligible-tenants in each area nominate and elect only certain executive board members representing their part of the development;
- 3) If residents of affordable housing represent a minority of housing units in a development, then the association may limit the number of executive board members that certain association members and voting-eligible tenants may vote for, in order to ensure the election of one or more affordable housing residents to the executive board;
- 4) An association may allow the members of the executive board to be separately nominated and elected by the association members, and voting-eligible tenants, of separate developments, so long as each development's voting weight is proportional, based on the number, value, or size of the units; and
- 5) The executive board of an umbrella or master association that does not directly contain units does not have to be elected by individuals who are association members, and voting-eligible tenants, of units within the geographical area of the umbrella or master association, provided the members of the executive board serve as executive board members of another development executive board, and have been nominated and elected by the association members, and voting-eligible tenants, of units in that development.

Finally, for those developments that do not include a method for amendment by the association membership, or only allow association members to amend the bylaws through a majority vote that is higher than a two-thirds majority, the amended bill establishes a mechanism through which association members would be able to compel the executive board to hold a meeting at which the association

membership could amend the bylaws through a simple majority vote. Compelling this vote would require 15 percent of the association members to present a request for a meeting, at which the vote would be conducted. The amended bill would not allow the use of this mechanism to require a vote on an amendment to the bylaws that had already been voted on by the association in the preceding 12 months.

COMMITTEE AMENDMENTS:

In order to make the amended bill identical to S-2492 (1R), as amended by the Senate Community and Urban Affairs Committee on October 13, the committee amendments:

- Refine the definition of “good standing” to clarify that this term only applies to unit owners with respect to their eligibility to vote in executive board elections or to amend the bylaws and their eligibility to nominate or run for any membership position on the executive board. Accordingly, meeting the requirements for good standing under the bill would only entitle a unit owner to these voting and nomination rights, and would not guarantee any other rights such as use of amenities; and
- Provide that a proposed amendment that is to be submitted for a vote by the association members must be unambiguous and consistent with applicable law and with the provisions of the bylaws that are not proposed to be amended, and if not in such condition, the proposed amendment must be revised to satisfy that requirement.

The committee amendments additionally adjust subsection b. of section 3 to narrow the section’s focus from providing that association bylaws may allow tenant membership, to providing that the bylaws may allow voting-eligible tenants to participate in executive board elections.

In the provisions of the bill concerning developments that do not include a method for amendment by the association membership, or only allow association members to amend the bylaws through a majority vote that is higher than a two-thirds majority, the amendments establish a mechanism through which association members may compel the executive board to hold a meeting at which the association membership can amend the bylaws through a simple majority vote, as opposed to a two-thirds majority. The amendments require that when an amendment to the bylaws is approved under this process, a copy shall be provided to association members.

The committee amendments also include technical changes to the definition of “association member” and “voting-eligible tenant” in section 2, as well as further technical changes to subsection b. of section 3, section 5, and subsection d. of section 6.

Finally, the committee amendments modify section 5 of the bill to provide that no bylaw, rule or other provision of a governing document of an association may:

- Provide for a term of a board member to be for more than 4 years;
- Prohibit a tenant from casting a vote allocated to a unit if the bylaws otherwise permit tenant participation in an election of board members;
- Provide for less than 14 nor more than 60 days' notice of the meeting at which an election of board members is scheduled;
- Prohibit a unit owner in good standing from nominating themselves or any other unit owner in good standing as a candidate for any membership position on the executive board;
- Prohibit any unit owner in good standing from voting for any nominated candidate in an executive board election;
- Prevent voting for a board member by electronic means where the executive board determines to employ voting in such manner and an owner consents to casting a vote in such manner; or
- Provide for an allocation of votes other than one vote for each unit, except where the bylaws or other governing document provide for the voting interest to be proportional to a unit's value or size.

STATEMENT TO
[First Reprint]
ASSEMBLY, No. 4091

with Assembly Floor Amendments
(Proposed by Assemblyman EUSTACE)

ADOPTED: FEBRUARY 15, 2017

These Assembly amendments insert a new section 3, and renumber sections 3 through 8 as sections 4 through 9. The amendments clarify that this bill, along with the provisions of P.L.1993, c.30 (C.45:22A-43 et al.), which this bill amends and supplements, is meant to apply to the associations of existing planned real estate developments. In accordance with recent court decisions, these amendments add language to subsection e. of section 1, section 3, and subsection a. of section 4, to clarify that the constraints placed on community associations by P.L.1993, c.30, shall not be limited by:

- the development's date of establishment;
- whether the developer has been subject to the registration requirements of "The Planned Real Estate Development Full Disclosure Act," P.L.1977, c.419 (C.45:22A-21 et seq.); or
- the exemption for offers and dispositions of fewer than 100 units under N.J.S.A.45:22A-25.

Additionally, these Assembly amendments add language to paragraph (1) of subsection g. of section 1, findings and declarations, and to the beginning of section 6, to clarify that the bill is intended to establish rights for resident-owners and certain others to participate in executive board elections. These amendments add language under paragraph (2) of subsection g. of section 1 to indicate that the intent of the bill is also to require, except under the very limited circumstances provided, a person must be elected in order to serve on the executive board.

Through adjustments to subsection d. of section 2, the amendments clarify that, as used in this bill, "owner" refers to a person who owns a housing unit, in the way that term is ordinarily used. The amendments add language to the end of the definition of "association member," subsection q. of section 2, to ensure that the inclusion of the developer in that definition is not construed to offer the developer a voting interest that conflicts with the timeline under N.J.S.A.45:22A-47, concerning the transfer of developer control to the owners. Through changes to the definition of "good standing" under subsection r. of section 2, the amendments incorporate an association member who is in full compliance with a settlement agreement for assessment payments, legal fees or other charges lawfully assessed, or has a pending, unresolved dispute concerning assessments, brought to the association's attention through alternative dispute resolution, or a pertinent court action.

Under subsection s. of section 2, the definition of a “voting-eligible tenant, and subsection b. of section 4, N.J.S.A.45:22A-43, the amendments provide that, an association may, but is not required to, permit tenant participation in executive board elections and/or tenant membership in the association.

Under subsection b. of section 4, in order to allow other individuals such as an owner’s spouse to potentially have association membership, the amendments remove the word “exclusively” from the requirement that membership is comprised exclusively of each owner.

Under subsection a. of section 6, the amendments provide that, with regard to an executive board election, the association shall not:

- under paragraph (3), fail to provide written notice to all association members of a call for nominations at least 30 days prior to the date on which owners are given notice of the meeting;
- under paragraph (5), fail to provide less than 14 or more than 60 days’ written notice of the meeting for which the election is scheduled, with the names of all candidates included;
- under paragraph (6), fail to use ballots that contain the names of all persons nominated; or
- under paragraph (10), establish election procedures that prohibit participation by the residents of low or moderate income units.

The amendments add additional language to subsection a. of section 6 to provide that:

- under paragraph (5), in the case of mailing notice of an election, it shall be effective when deposited in the mailbox with proper postage; and
- under paragraph (9), associations may permit more than one vote per unit, so long as each unit is allocated an equal number of votes, or a proportional number of votes based on each unit’s value or size.

These amendments provide, under subsection c. of section 6, that associations shall conform to the "New Jersey Nonprofit Corporation Act," N.J.S.A.15A:1-1 et seq., regarding ballot counting.

Under paragraph (1)(e) of subsection d. of section 6, the amendments allow association bylaws to provide that no more than one person from a single unit may serve on the governing board simultaneously.

The amendments adjust paragraph (3) of subsection d. of section 6 to provide that, except regarding appointments by the developer permitted under current law, and in planned real estate developments with under 10 units, an association shall:

- not allow a person to take an executive board position through appointment, unless the appointment is only to fill a vacancy in the executive board created by resignation, death, failure to maintain reasonable qualifications to be an executive board member or by removal in accordance with the bylaws; and

- ensure that, in order to serve on the executive board, a person is elected.

These amendments add language to subsection b. of section 7 to clarify that the bylaws of an association may allow an individual to waive his right to receive notice of an association meeting, if waived in writing.

Under paragraph (2) of subsection d. of section 7, these amendments add language clarifying that a vote by association members to amend the bylaws shall be open to all association members.

Under paragraph 2(b) of subsection d. of section 7, regarding the procedure to amend the bylaws by majority vote of association members in associations for which no such method otherwise exists, the amendments replace a requirement that the vote take place between 7:00 and 8:00 p.m. with a requirement for the vote to take place at a time when most association members are able to attend.

These amendments add a new paragraph (5) to subsection d. of section 7 to require that, unless necessary to comply with State, federal or local law, an association's executive board is only permitted to amend the bylaws without a vote open to all association members if notice is provided to all association members of the proposed amendment. In such case, the notice must include a ballot to reject the proposed amendment. If at least 10 percent of association members vote to reject the amendment within 30 days of its mailing, the amendment will be deemed defeated.

Under subsection c. of section 8, the amendments require that, upon assumption of control of the development by the owners, the developer shall supply the association with the governing documents, and other pertinent documents, within 60 days of the turnover date.

These amendments direct that the bill shall take effect immediately. However, the provisions of the bill concerning notice, nominations, ballot content, voting, and vote distribution in executive board elections will remain inoperative until the first day of the third month next following enactment and shall apply to each executive board election on or after that date.

Finally, these amendments also include technical adjustments to subsections b. and g. of section 1, subsection r. of section 2, section 3, subsection b. of section 4, section 5, subsections a. and d. of section 6, subsections a., b., and d. of section 7, and subsections a., b., and d. of subsection 8.

STATEMENT TO
[Second Reprint]
ASSEMBLY, No. 4091

with Assembly Floor Amendments
(Proposed by Assemblyman Eustace)

ADOPTED: MARCH 16, 2017

These Assembly floor amendments revise language within subsections e., f., and g. of section 1, the findings and declarations section, in order to clarify the legislative intent of this bill.

These Assembly amendments adjust the definition of “purchaser” or “owner,” in subsection d. of section 2, to ensure that, as used in P.L.1993, c.30 (C.45:22A-43 et seq.), the definition includes the holder of a “proprietary lease” as defined in section 3 of the “The Cooperative Recording Act of New Jersey,” P.L.1987, c.381 (C.46:8D-3).

These amendments adjust the definition of “association member,” in subsection q. of section 2, to ensure that the definition is not interpreted to alter the developer’s transition obligation from that permitted under section 5 of P.L.1993, c.30 (C.45:22A-47), or to give the developer a voting interest in executive board elections in addition to the developer’s existing authority to select one executive board member so long as unsold units remain in the development.

These amendments adjust the definition of “voting-eligible tenant,” in subsection s. of section 2, in order to ensure that a tenant may only fall into this category, and have the ability to vote in executive board elections if:

- The governing documents permit tenant participation in executive board elections; and
- It has either been the community’s standard practice prior to the enactment of this bill, to allow tenant election participation, or the owner has acknowledged the tenant’s right to vote in writing.

These amendments also adjust the same definition to clarify that it is not intended to affect voting as an agent of the owner through a proxy or power of attorney, and is not intended to include an “owner” or holder of a “proprietary lease” as those terms are defined in section 3 of the “The Cooperative Recording Act of New Jersey,” (C.46:8D-3).

Under paragraph (1) of subsection a. of section 4, the amendments clarify that P.L.1993, c.30 (C.45:22A-43 et seq.), applies to a development regardless of whether the developer has been exempted from the registration requirements of section 6 of "The Planned Real Estate Development Full Disclosure Act" ("PREDFDA"), P.L.1977, c.419 (C.45:22A-26), and remove a specific reference to the 100 unit exemption. Because of the more general reference to exemptions, the reference to the 100 unit exemption is no longer necessary.

These amendments add a new subsection b. to section 4, in order to ensure that nothing in the bill is interpreted to require the registration of developments that are not otherwise required to register under section 6 of P.L.1977, c.419 (C.45:22A-26).

These amendments add language to section 6 to require associations to hold elections in accordance with the provisions of their governing documents, so long as they do not conflict with the provisions of this bill. If the governing documents do not set a specific time or interval, the amendments require elections to be held at two year intervals. If an association has not held an election in compliance with its governing documents in two or more years, the amendments require it to hold an election within 90 days of submission to any current executive board member of a petition signed by twenty-five or more percent of association members in good standing, but in no event less than the number of association members required to meet quorum requirements. If an association has no remaining board members, and association members do not act on petition or by majority, then the amendments allow any association member or group thereof may, at common expense and, upon written notice to all owners, petition a court for authority to act temporarily in the interests of the association, and hold an election within 90 days of the date of the court order. The amendments require any proxies used by an association to contain a prominent notice that use of the proxy is voluntary on the part of the granting owner, that it can be revoked at any time before the vote is cast, and that absentee ballots are available. The amendments require that an association may not use proxies for a board member election without also making absentee ballots available.

These amendments re-letter subsection a. of section 6 as subsection c., and exclude planned real estate developments with fewer than 50 units from the election restrictions under that subsection except for the restrictions of paragraphs (9) and (10), from subsection e. of section 6, concerning ballot counting, and from the prohibition on appointments to the executive board, established under paragraph (3) of subsection f. of section 6. However, under subsection b. of section 6, these amendments require that, in an executive board election within an association of a development with fewer than 50 units, certain minimum standards must still be met, including: (1) provision of adequate advance notice of an election, (2) provision of the ability to nominate and vote for any association member in good standing, (3) provision of an opportunity to review any candidacy qualifications such that the owner can be a candidate for election to the board, (4) provision of ready access to full information on when and how to vote, and (5) the counting of ballots and verification of eligibility to vote, which are all to be conducted in a non-fraudulent manner.

These amendments clarify that the election requirements of subsection c. of section 6 apply to associations with 50 or more units, and to master associations of 50 or more units in which elections to the master board are not from each individual project comprising the master association. Under paragraph 2 of that subsection, the amendments provide that an association may not prohibit an individual acting under a valid power of attorney or proxy from voting. Under

paragraph 4 of that subsection, the amendments provide that the period for submitting nominations for the executive board must not be less than 14 days from the mailing of the request for nominations. Under paragraph 5 of that subsection, the amendments provide that, in the notice of an executive board election, the ballots shall, list all candidates nominated, in alphabetical order by last name. Under that paragraph, the amendments further provide that election notice may only be sent electronically if the association member has agreed in writing to accept notice by electronic means, or the governing documents permit electronic notices, provided another form of voting by absentee balloting or proxy voting is available.

These amendments add language to subparagraph (1)(e) of subsection f. of section 6 to exclude representatives of the developer from the requirement that a development's bylaws may be amended to limit representation on an executive board to one individual per unit. This exclusion would only apply prior to surrender of control to the owners pursuant to section 5 of P.L.1993, c.30 (C.45:22A-47).

Finally, these amendments make technical changes to subsections d., q., and s. of section 2, section 6, subsection d. of section 7, and subsections b. and c. of section 8.

Governor Christie Takes Action On Pending Legislation

Thursday, July 13, 2017

Tags: [Bill Action](#)

Trenton, NJ - Governor Chris Christie today announced that he has taken action on the following pending legislation:

BILL SIGNINGS:

S-1451/A-3856 (Ruiz, Allen/Holley, McKnight, Singleton) - Directs DOE to make database of special education decisions available on website

S-2059/A-3769 (Weinberg/Vainieri Huttle, Mukherji) - Requires DOH to ensure that fetal death certification and reporting requirements are consistent with current federal standards

S-2348/A-3799 (Ruiz, Diegnan/Lampitt, Vainieri Huttle, Muoio, Oliver, Mosquera, DiMaio, McKnight, Mukherji) - Includes students who participate in school intramural sports programs in the student-athlete head injury safety program

S-2492/A-4091 (Gordon, O'Toole/Eustace, Chiaravalloti, Mukherji, Benson, Jasey) - Enhances resident voting participation rights in common interest communities

S-2878/A-4523 (Vitale, Codey/Schaer, Singleton, Vainieri Huttle, Pinkin) - Requires DOH to permit certain health care facilities to use shared clinical space when providing primary health care and behavioral health care for mild to moderate behavioral health conditions

SJR-50/AJR-69 (Weinberg, Gordon/DiMaio, Pinkin, Quijano) - Designates April as "Genocide Awareness Month"

SJR-62/AJR-96 (Codey/Eustace, Lampitt, Pinkin, Mukherji, Jones, Downey, Rooney) - Designates month of May of each year as "Mental Health Awareness Month"

A-374/S-2462 (Auth, Prieto, Schepisi, Jimenez, Mukherji/Sacco, Cruz-Perez) - Prohibits MVC from imposing duplicate license or identification card fee and digitized picture fee if duplicate is requested to reflect change in organ donor status

A-2181/S-2809 (Caride, Schaer/Sarlo) - Prohibits NJTA from requiring county guarantee to provide maintenance of pedestrian bridge under certain circumstances when determining approval for construction of pedestrian bridge

A-2690/S-1944 (Johnson, Rible, Dancer, O'Scanlon, Space, Phoebus/Cardinale, Van Drew) - Expands list of retired law enforcement officers eligible to carry handgun

A-4334/S-2724 (Conaway, Pinkin/Codey, Vitale) - Requires alternative payment models to register with DOH; permits health care practitioners to refer patients to health care service in which the practitioner has beneficial interest when related to alternative payment model

A-4350/S-2914 (Eustace, Karabinchak/Greenstein) - Precludes DEP from imposing certain certification requirements on installers of individual subsurface sewage disposal systems

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More Information

[Senate Bill 587](#)

[Senate Bill 677](#)

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[Senate Bill 3006](#)

[ASSEMBLY BILL NO. 1855](#)

[ASSEMBLY BILL NO. 4701](#)

A-4583/S-2991 (Zwicker, Conaway, Land, Downey, Houghtaling/Turner, T. Kean) - Appropriates \$2,988,859 from 2009 Historic Preservation Fund and constitutionally dedicated CBT revenues to provide capital preservation grants for certain historic preservation projects

AJR-27/SJR-59 (Muio, Gusciora, Benson, Eustace, Pinkin, Sumter, Mukherji/Turner) - Designates May of each year as "Asthma Awareness Month"

BILLS VETOED:

S-587/A-2937 (Cunningham/Sumter, Mukherji, Quijano) – ABSOLUTE - Requires incarcerated individual from State to be counted at residential address for legislative redistricting purposes

S-677/A-3677 (Rice, Turner/Wimberly, Singleton, Holley, Tucker, Sumter, Quijano) – CONDITIONAL - Requires racial and ethnic impact statement for certain bills and regulations affecting sentencing

S-806/A-2463 (Weinberg, Gordon/Eustace, Vainieri Huttie, Caride, Muio, Lagana, Lampitt, Mukherji) – CONDITIONAL - Requires owner or operator of certain trains to have discharge response, cleanup, and contingency plans to transport certain hazardous materials by rail; requires NJ DOT to request bridge inspection reports from US DOT

S-3006/A-4589 (Weinberg, Gordon/Vainieri Huttie, Quijano, Wisniewski, Johnson, Mukherji) – ABSOLUTE - Prohibits PANYNJ from providing assistance for enforcement of March 6, 2017 US Executive Order banning entry into US of individuals from certain countries

A-1855/S-3123 (Wimberly, Prieto, Oliver, Sumter/Cruz-Perez, Cunningham) – CONDITIONAL - Concerns outreach and training for minorities and women in the construction industry

A-4701/S-3059 (Eustace, Zwicker, Vainieri Huttie, Gusciora, Kennedy, Benson, Jasey/Sweeney, Smith) – ABSOLUTE - Requires State full participation in Regional Greenhouse Gas Initiative

Press Contact:
Brian Murray
609-777-2600



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Office of the Governor
PO Box 001
Trenton, NJ 08625
609-292-6000